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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 280. 41

HENRY S. HALE, ARTEMAS KILBURN, J. WARREN HALE, CHENEY KILBURN AND WARREN HALE, WHO SURVIVED H. W. CURTIS, WITH WHOM THEY TRADED AS HALE, KILBURN AND COMPANY, AND THE HALE AND KILBURN MANUFACTURING COMPANY, PLAINTIFFS IN ERROR,

vs.

ELISHA E. EVERETT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED SEPTEMBER 13, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

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vs.

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1 UNITED STATES OF AMERICA:

The President of the United States to the honorable the supreme court of the State of Pennsylvania for the eastern district, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of Pennsylvania for the eastern district before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had, which plea was the appeal of Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn and Company and the Hale and Kilburn Manufacturing Company, of July term, 1882, No. 90, to the said supreme court from the judgment and decree of the court of common pleas No. four, of Philadelphia county, in a certain suit between Elisha E. Everitt,

2 plaintiff, and Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn and Company and the Hale and Kilburn Manufacturing Company, defendants, wherein was drawn in question the validity of the Constitution and statute law of the United States, and a privilege, right, and immunity claimed and exercised thereunder, and the decision was against their validity, a manifest error hath happened to the great damage of the said Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn and Company and The Hale and Kilburn Manufacturing Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the

3 record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the seventh day of February, in the year of our Lord one thousand eight hundred and eighty-three, and the one hundred and seventh year of the Independence of the United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk Circuit Court U. S., Eastern Dist. of Penna.

4 [Endorsed:] Henry S. Hale *et al.* & The Hale & Kilburn Manufacturing Co., pl'ffs in error, *vs.* Elisha E. Everett, def't in error. Writ of error. Allowed by me this seventh day of February, 1883. Ulysses Mercur, chief justice of Penna.

1—280

5 Know all men by these presents that we, Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, Warren Hale, and Theodore M. Delaney and Jacob Rech, George W. Simons, George E. Dearbon, George W. Smith, Isaac Keeler, and The Hale and Kilburn Manufacturing Company, are held and permanently bound unto Elisha E. Everitt, in the full and just sum of thirty thousand ($30,000) dollars, to be paid to the said Elisha E. Everitt, his certain attorney, executors, administrators, and assigns; to which payment, well and truly to be made, we do bind ourselves, our successors, and assigns, and our heirs, executors, and administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seal and dated this seventeenth day of March, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately, at a court of common pleas, No. 4, in and for the county of Philadelphia, judgment was entered against Henry S. Hale, Artemus Kilburn, J. Warren Hale, Cheny Kilburn, Warren Hale, and The Hale and Kilburn Manufacturing Company,
6 at the suit of Elisha E. Everitt, of September term, 1878, No. 564, which judgment was afterwards affirmed by the supreme court of the State of Pennsylvania in a certain plea and suit in said court, of July term, 1882, No. 90, and the said Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheny Kilburn, Warren Hale, and The Hale & Kilburn Manufacturing Company, having obtained a writ of error to the Supreme Court of the United States to reverse the said judgment rendered in the last above-entitled action, and having filed a copy thereof in the office of the prothonotary of said Court and a citation directed to the said Elisha E. Everitt, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next;

Now, the condition of the above obligation is such that if the said Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheny Kilburn, Warren Hale, and The Hale & Kilburn Manufacturing Company shall prosecute their said writ of error to effect and an-
7 swer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY S. HALE, [L. S.]
ARTEMAS KILBURN, [L. S.]
J. WARREN HALE, [L. S.]
CHENEY KILBURN, [L. S.]
WARREN HALE, [L. S.]
THE HALE & KILBURN M'F'G CO.,
[Seal of The Hale & Kilburn Manufacturing Co. 1876.]
By CHENEY KILBURN, *Pres't.*

Attest: J. WARREN HALE, *Sec.*

THEODORE M. DELANY. [L. S.]
JACOB RECH. [L. S.]
GEO. W. SIMONS. [L. S.]

GEO. E. DEARBON. [L. S.]
GEO. W. SMITH. [L. S.]
ISAAC KEELER. [L. S.]

Signed, sealed, and delivered in presence of—
CHAS. S. GREENE,
Prothonotary, Supreme Court of Pennsylvania, E. D.

Approved by—
ULYSSES MERCUR,
Chief Justice.

[Endorsed:] 90. July term, 1882, supreme court. Bond and approval. Hale *et al.'s* appeal. Filed March 17, 1883.

8 *Hale et al.'s Appeal.*

90. July Term, 1882.

CHENEY KILBURN, being sworn, says he resides at the St. Cloud Hotel, Philadelphia; engaged in the furniture business; manufacturer of bedsteads.

Owns property S. E. cor. of 7th & Race, 24 f't 1 in. on Race, 107 feet on 7th St.; assessed at $15,000 for 1882, has — at 20 & 18. I value it at $25,000. I would not be willing to sell it at less. I bought it about 14 years since. I improved it; it is a dwelling-house & stable; $5,000 on it mortgage. I may be — bail in an amount not exceeding $500.00.

I am president of the Hale & Kilburn Manuf'g Co., a party defendant in this suit. This Co. owns 48 & 50 N. 6th St. and 615, 617, 619, & 621 Filbert St., in this city. I estimate the property worth $150,000; mortgages, one of 6,000 & 8,000 on Filbert St. property; N. 6 St. ground rent on principal, $30,000, being a 5 % ground rent of $1,500.

X-exam.:

9 Hale & Kilburn Co. are in business; furniture business; manufacturing furniture.

Are they clear of debt?

Cannot say.

What do they use Filbert St. property [for]?

Manufacturing; Sixth St. for store; these properties join; make an L.

Real estate is part of the assets of their business.

Did you say all worth 150,000?

Yes.

Pay taxes on it?

Yess.

What is it assessed at?

Don't know; do not know what it is assessed at.

Do you count in the $150,000 value of building & machinery?

Buildings only.

Property at 7 & Race St. is not rented; my son-in-law lives there; do not charge him any rent; let him have it free of rent.

H. S. Hale is his name, one of the defendants; lives there as a free gift; lived there myself until nearly one year ago; never rented the house.

10 I do not know how the ass- was reduced—never asked for it to be reduced; no knowledge how it was reduced.

I do not know what the houses in that neighborhood rent for.

The title stands in my name.

I bought it from Lydu Cox. I think there was a house on the lot when I bought it; I tore it down and built it up; I paid 10,000 cash; 5,000 mortgage on it.

There are no judgments against me.

I have not been sued; no other suit but the Everett suit.

No other business except being president of the Hale & Kilburn Co.

There is a little patent suit pending against me in the U. S. circuit c't.

X-exam.:

I now produce receipt for taxes on 636 Race St., showing a valuation of $15,000, 1882.

I also produce tax bill for 1877, showing a valuation of 20,000.

Also, tax bill for some property of '78 showing a — $8,000.

CHENEY KILBURN.

11 J. WARREN HALE, being sworn:

I am one of the d'f't- in this suit, & secretary of the Co.

6th St. assessed at $60,000.

Filbert St., $40,000.

Personal property belonging to you are those buildings & manufact*ure*, and manufact*ure* and machinery are enough to pay all liabilities of the company.

X-exam.:

Our liabilities are $135,000 about; still engaged in trade.

Value of patents *are* not counted in this valuation.

J. WARREN HALE.

THEODORE M. DELANEY, being sworn:

I reside [at] 916 Franklin street; occupation, manufacturer of glue & curled hair.

I own 853 Franklin St., worth about, which cost me, $5,600;

230 Richmond St.; dwelling-house; cost —; and another on rear lot, 229 Allen St.; cost me at sheriff's sale $4,400—worth about $5,000 at a moderate estimate.

12 969 Franklin St., where I reside; worth about $8,500; asse'd at $7,300; cost me about 10,000 when I got it fixed up.

1527 Franklin St., dwelling-house, cost me at sheriffs sale $5,500; have expended on it $1,500; assessed at $6,300.

2107 N. 5th St., assessed at $2,600.

1322 N. 6 St., " " 4,800.

These are all unincumbered property.

I have a ½ interest in some property in my business; one is a property on E. side of Mascher, above Master; other property on N. Second St., above Lippincott St.; my interest in the whole cost me $5,300; I would not take that for it.

I have other property encumbered.

X-examined:

The title of 853 Franklin St. in my own name; all these properties are in my own name.

My deeds are recorded.

I have owned these properties not over 5 or 6 years.

The last property I got about 3 years ago.

I do not deal in real estate; all purchased for investment.

13 No judgments against me that I am aware of; I am security for a trustee; the amount is 15,000; I suppose the amount is double. I am also on a custom-house bond for Mr. Sharpless & Watts, what is called a 6 months' importer's bond. I do not know about what the amount; have no idea of the amount.

Am not security for any one else.

No suits against me.

No incumbrances on these properties; taxes all paid for.

Two properties, 969 Franklin & 853, I occupy.

The rents of the others are as follows:

229 Allen St., $13 per month.
2127 N. 5- St., 23 " "
1322 " 6- " 35 " "
1527 Franklin St., $550 per year.

230 Richmond St., occupied by a relative, no rent; would rent for $30 per month.

My house & stable would rent for $1,000 a year.

THEODORE M. DELANY.

14 GEORGE W. SIMONS, being sworn:

I reside at 1424 N. Broad St.

Business, manufacturing jeweler.

I own, amongst others, the following property:

616, 618, & 620 Chestnut, what is known as Citizens' buildings.

611 & 613 Sansom St., front of 50 ft. on Chest. St., running through to Sansom St.

Assessed at $145,000.

Mortgage, $65,000 already against it that I know of.

Two mortgages held by Phila. Sav. Fund.

I consider it worth the balance.

X-ex.:

Title in my own name; deed recorded; purchased from Jas. H. Orne.

Purchased it in 1863; owned it 20 y'rs.

Paid originally 70,000, but have built on it; have spent $50,000; does not include machinery; have spent 50,000.

The whole renting of this building is over $16,000.
No judgment against me.
It is all one property; no ground rents.
Described as one lot 235 feet in depth.
Not security that I know of now.
Many years ago I was on a bond of $5,000. I do not know if it is in existence now.
Am engaged in active business—a jeweler.
611 & 613 Sansom is my place of business.
I do not know this property is for sale. I have not offered it.

GEO. W. SIMONS.

GEORGE E. DEARBORN, being duly sworn:

I reside at 616 N. 15th St., Philada.
My business is dealer in musical instruments at 1508 Chestnut St.
I am the owner of ½ interest in a property in Powelson avenue, between 39 & 40 St.; mansion fronting 140 feet on Powelson ave., running through to State St.; 220 feet property fronting on three streets, Powelson, Sloan, and State streets, assessed at $32,000.
I consider it worth $50,000; 20,000 mortgage on the whole property.
No judgment against me.
No security for anybody else.

X-ex.:

The entire p-operty is assessed at 37,000; I own ½ of it.
The title in the name of Geo. W. Smith & Geo. E. Dearborn; deed recorded; owned it two years; purchased it from Sheriff Keims, Smith, Trustee Owens in Market St., at private sale; paid $25,000, clear; nothing but mortgage against it. No judgments against me. No security outside of this case. Bought this property for our own use; hope to use it for our own use; occupy it for furniture business, with Mr. Smith in partnership. The property is not deeded to the firm, but to individuals, Geo. W. Smith & Geo. E. Dearborn; our firm debts are not $10,000.
Credit outside of my real estate exceed all these debits.

GEO. E. DEARBORN.

GEO. W. SMITH, being duly sworn:

Reside at 3615 Hamilton St.; my place of business at our factory, at Powlton aven-, and 1216 Chestnut St.; and I am a partner and am in business with the last witness, Geo. E. Dearborn.
I heard what Mr. Dearborn said about our joint property on Powlton aven-, and I confirm him. No other incumberence but the $20,000.
No judgment or liens against me individually; no security outside of this case.
I heard what he said about the debts & credits of the firm; I confirm him; our assetts are more than double to cover that we owe outside of our real estate.

X-ex.:

Our deed is recorded; no suits against me; no judgment against me; no security in any other case. I have not though- of selling my interest; of course, I coould sell it if I could get my price for it. I have never made a-y price; it is used for car-ying on the firm bus-n-s.

GEO. W. SMITH.

18 ISAAC KEELER, being duly sworn:

I reside at 818 No. 7 St. I am a wholesale cloth dealer at 823 Market St.

I own 818 No. 7 St., which is about 22 feet front, 115 feet deep; assessed at $9,500; worth about $16,000; cost me about $20,000; mortgage of $7,000 against it; no incumbrances of any kind against me.

I am surety on a $600 replevin bond; nothing else that I am aware of; deed in my own name recorded here; held the property since 1868.

X-ex.:

It is not offered for sale.

I am in the cloth business; firm of Hicks & Keeler.

No judgments against me; no suits against me.

Title is in my own name.

My firm is indebted, I suppose, $130,000; our assets outside of our liabilities will discharge our indebtedness.

ISAAC KEELER.

19 JACOB RECH, being duly affirmed:

Reside 975 Franklin St.; business, carriage & wagon builder, 8th & Girard avenue.

I own a property at 2nd & Bristol St.; 15 acres; house, barn, & stable; about 5 miles from 2d & Market St.; in my own name; deed recorded, I believe; I have held it about 14 years; clear of all incumbrance; I consider it well worth $15,000; ground opposite it has been sold for 1,500 per acre; assessed at 8,000 or 8,500, I believe, in '82. I rent it.

I own the property at 8th & Gir. Av.; I have owned it about 20 years; *the* I put this property at $50,000; ground rent of 17,000, which, I believe, is in the difference, 16 per cent. ground rent, between 850 & 1,000.

Nothing against this property but this ground rent. No judgment against me. No lien against me. I am security for an assignee between 3 & 4,000. I know of no other liability of this kind.

20 X-exam.:

The deeds to both of these properties are in my own name. I believe they are recorded.

Up to the 1st of the year I was in business alone. On that day I

told my son I would give him an interest, but everything is in my own name. My liabilities are from 3 to 5,000.

Without touching my real estate, I have assets to pay my liabilities, I suppose, about 10 times.

The farm rent- for $300.

JACOB RECH.

8th & Gir. ave. property ass. 30,000.

JACOB RECH.

Taken and justified, March 17th, 1883, before me,

CHAS. S. GREENE,
Prothonotary.

No. 90, July T., 1882.

21 The United States of America to Elisha E. Everett, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the eastern district, wherein Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn and Company and the Hale and Kilburn Manufacturing Company, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ulysses Mercur, chief justice of the supreme court of Pennsylvania, this seventh day of February, in the year of our Lord one thousand eight hundred and eighty-three.

ULYSSES MERCUR,
Chief Justice of Pennsylvania.

22 J. Edward Ackley, being duly sworn, deposes and says that he served the within citation upon the defendant in error, Elisha E. Everitt, by reading the same to him and handing him a true copy thereof on the eighth day of February, 1883.

J. EDWARD ACKLEY.

Sworn and acknowledged this eighth day of February, 1883.

CHAS. S. GREENE,
Prothonotary Supreme Court, E. D.

[Endorsed:] Henry S. Hale and others and the Hale and Kilburn Manufacturing Company, plaintiffs in error, in a writ of error from the Supreme Court of the United States to the supreme court of Pennsylvania, in a certain suit in said supreme court of Pennsylvania, of July term, 1882, No. 90, *vs.* Elisha E. Everitt, defendant in error. Citation.

23 *Petition for Writ of Error.*

To the Honorable Ulysses Mercur, chief justice of the supreme court of Pennsylvania:

The petition of Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Co. and the Hale & Kilburn Manufacturing Company, respectfully showeth:

That your petitioners brought suit into the supreme court of Pennsylvania for the eastern district to July term, 1882, No. 90, by writ of *certiorari*, to an appeal from a decree of the court of common pleas of Philadelphia, No. 4, of September term, 1878, No. 564, in which suit in said supreme court your petitioners were appellants and defendants in the said court of common pleas, and Elisha E. Everitt was appellee in said supreme court and complainant in said court of common pleas.

That the said suit in the said court of common pleas was by bill in equity, charging, among other things, that your petitioners were bound and legally liable to deliver and assign to the plaintiff, Elisha E. Everitt, sundry letters patent granted by the United States, respectively, to wit: No. 159,908, granted February 16th, 1875, to H. W. Curtis; No. 181,450, granted August 22d, 1876, to C. Kilburn; No. 182,465, granted September 19th, 1876, to S. D. Newcomb; No. 210,777, granted December 10th, 1878, to Henry S. Hale, and No. 8161, granted April 9th, 1868, to Andrew Stark, and were also liable to account to the plaintiff for royalty on certain articles manufactured by your petitioners, and further prayed an injunction to restrain your petitioners from manufacturing said patented articles under said patents. And your petitioners averred in their answer that they were not liable as charged, because the claim and demand of the plaintiff, Elisha E. Everitt, was founded upon a patent which was an infringement of the patents owned by your petitioners, and was invalid and void, and that many of the said manufactured articles were not manufactured under the patent of the said plaintiff.

That the said court of common pleas of Philadelphia county rendered judgment against your petitioners on the 22d day of April, 1882, in the sum of six thousand five hundred and fifty-four dollars and fifty-eight cents (6,554.58), with costs, and further ordered, adjudged, and decreed that your petitioner should deliver and assign to the plaintiff, Elisha E. Everitt, the aforesaid letters patent belonging to your petitioners, and further enjoined your petitioners from manufacturing said articles as aforesaid under the patents owned by them.

That on the 29th day of January, 1883, the supreme court of Pennsylvania, sitting at Philadelphia, ordered said judgment to be affirmed, and, afterwards, on the 29th day of January, 1883, the said judgment was duly entered and recorded in the eastern district of Pennsylvania aforesaid.

That the said judgment of the said supreme court is a judgment of the highest court of record of the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the right, title, privilege, and immunity claimed by your petitioners, defendants, and appellants aforesaid were claimed under the Constitution of the United States, article 1, section 8, providing among other things that Congress shall have power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries, and article 3, section 8 of said Constitution providing that the judicial power of the United States shall extend to all cases in law and equity arising under the Constitution and laws of the United States, and under the statute laws of the United States referring to the said subject-matters, all of which appears of record.

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, and immunity so claimed.

That the said court of common pleas of Philadelphia and the supreme court of Pennsylvania have and had no jurisdiction over the subject-matter of the controversy, but that the jurisdiction is by the Constitution and the statute laws of the United States exclusively vested and cognizable in the Federal courts, and, therefore, the said proceedings and judgment aforesaid are null and void, and contrary to the Constitution and statute law of the United States in the premises.

Your petitioners, therefore, pray for the allowance of a writ of error to the supreme court of Pennsylvania in order that the said judgment of the supreme court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States.

And they will every pray.

HENRY S. HALE,
ARTEMAS KILBURN,
J. WARREN HALE,
CHENEY KILBURN,
WARREN HALE,

who survived H. W. Curtis, with whom they traded as Hale Kilburn & Co.

THE HALE AND KILBURN MANUFACTURING COMPANY,
By CHENEY KILBURN, *President.*

Attest:

[SEAL.] J. WARREN HALE, *Secretary.*

Cheney Kilburn, being duly sworn according to law, deposes and fays: That he is president of the Hale & Kilburn Manufacturing Company, one of the petitioners, and on behalf of the said company says that the facts in the above petition stated are true to the best of his knowledge and belief.

Sworn and subscribed before me this seventh day of February, 1883.

ULYSSES MERCUR,
Chief Justice of Pennsylvania.
CHENEY KILBURN,
President.

Attest:
[SEAL.] J. WARREN HALE, *Secretary.*

25 Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, being duly severally sworn according to law, depose and say that the facts in the above petition stated are true to the best of their knowledge and belief.

HENRY S. HALE.
ARTEMAS KILBURN.
J. WARREN HALE.
CHENEY KILBURN.
WARREN HALE.

Sworn and subscribed before me, this seventh day of February, 1883.

ULYSSES MERCUR,
Chief Justice of Pennsylvania.

Endorsed: No. 90. July term, 1882. S. C. E. D. Appeal of Henry S. Hale *et al.* and the Hale and Kilburn Manufacturing Company from the decree made in the case in which Elisha E. Everitt was plaintiff and the above-named appellants defendants.

26 *Exemplification.*

STATE OF PENNSYLVANIA, } *sct:*
Philadelphia County, }

Among the records and proceeding of the court of common pleas, No. 4, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. 564, Sept. term, 1878, to wit:

Docket Entries. September Term, 1878.

Mitchell & Bowman, 564. Otterson, 10 | 8, '78.

ELISHA E. EVERETT
vs.
HENRY S. HALE, ARTEMAS KILBURN, J. WARREN HALE, CHEYNEY KILBURN, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company, and The Hale & Kilburn Manufacturing Company.

Oct. 11, '78, rule to plead ans. or demur. filed.
Nov. 22, '78, answer filed.
Nov. 5, '79, amendment to bill filed.
Bill in equity filed Sept. 24, 1878.

Nov. 8, 1878, the court grant- an enlargement of the time for filing answers in above case until Nov. 20, '78.

Dec. 9, 1878, decree for complainants. See M. B., 1878, page 485 & 486.

Eo die C. Stuart Patterson, Esq., appointed examiner and master, to take & state account.

May 3, 1879, motion to amend bill allowed.

26½ Jan'y 30, 1880, rule for commission to take dep's and interrogatories filed.

Feb'y 20, '80, commission exit.

Mch. 9, 1880, commission returned, opened, and filed.

March 15, 1881, report of master with exceptions filed.

Eo die testimony filed.

Feb'y 12, 1881, the court order that the time for filing exceptions to the master's report be extended to March 5, '81.

Eo die petition filed.

Mch. 9, 1881, time for filing master's report extended to March 12, 1880.

Sept. 28, 1881, rule on the plaintiff and defendants for the payment of examiner and master's fee.

Ap'l 22, 1882, exceptions dismissed for decree. See No. B, 1882, p'g 233.

April 25, 1882, appeal of defendants from decree.

Eo die aff. that appeal is not for delay filed.

Eo die security in $13,500 entered.

May 20, 1882, *certiorari* brought into office. Certified from the record January 3rd, 1882.

[SEAL.] T. H. SMITH,
R. Prot'y.

27 *Plaintiff's Bill.*

In the Court of Common Pleas, No. 4, for the City and County of Philadelphia. In Equity.

ELISHA E. EVERITT
vs.
HENRY S. HALE, ARTEMUS KILBURN, J. WARREN HALE, CHENEY Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company and the Hale & Kilburn Manufacturing Company.

To the honorable the judges of the said court:

Your orator complains:

I. That on the 24th day of March, 1874, letters patent of the United States of America were granted to him for an alleged new and useful improvement in wardrobe bedsteads.

II. That on the 16th day of April, 1874, a certain agreement in writing of that date was made between your orator, of the first part, and the said Henry S. Hale, Artemus Kilburn, J. Warren Hale, H. W. Curtis, Cheney Kilburn, and Warren Hale, trading as Hale, Kilburn & Co., of the second part, in the words following, to wit:

"Agreement made and entered into this 16th day of April, A. D. 1874, by and between Elisha E. Everitt, of the city of Philadelphia, of the first part, and Henry S. Hale, Artemus Kilburn, J. Warren Hale, H. W. Curtis, Cheney Kilburn, and Warren Hale, all of the said city, and there trading together as Hale, Kilburn & Co., of the second part:

"Whereas letters patent of the United States were granted to the said party of the first part for an improvement in wardrobe bedsteads, said letters patent being dated March 24th, 1874, and numbered 148,940;

"Now these presents witness that by and between the said parties hereto it is agreed as follows:

"First. In consideration of the sum of five hundred dollars to him, by the said parties of the second part, in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the faithful keeping, observance, and performance by the said parties of the second part of the stipulations hereinafter contained to be by them kept, observed, and performed, the said party of the first part agrees to, and hereby does, assign and set over to the said parties of the second part the entire right, title, and interest in and to said invention, as secured by said letters patent, for, to, and in the whole of the United States, the same to be held and enjoyed by the said parties of the second part for their own use and behoof of their legal representatives, fully, freely, and entirely to the full end of the term for which said letters patent are granted, subject to the stipulations hereinafter contained; and covenants and agrees that he will, at the request and expense of the said party of the second part, execute all such lawful instruments of writing, and do all such lawful acts and things, as may be requisite and proper to procure a reissue of said letters patent for the better securing to said parties of the second part of the interest hereby conveyed to them or intended so to be.

"Second. The said parties of the second part agree to pay to said party of the first part, his heirs or assigns, a royalty or patent
28 fee upon all of the said patented bedsteads made and sold by them, at the rate of seven per cent. upon the wholesale prices received by them therefor; and, furthermore, to pay to said party of the first part, his heirs or assigns, one-half of the net profits which they may derive from the sale of any rights and licenses in and under said letters patent, and they agree to account for in writing, and to pay over, such sums as may be due under this clause of agreement at the end of each and every month from and after the date hereof; and, fu-thermore, to keep just and true books of account, to be open at all reasonable times to the inspection of said party of the first part, his heirs, assigns, or his or their duly authorized agent or agents, and showing the number of said patented bedsteads made and sold by them, and the prices received therefor, and showing also all rights and licenses granted under the patent, and the amount received therefor.

"Third. The said parties of the second part promise and agree to

use all reasonable efforts to promote the sale and introduction of the said patented bedsteads.

"Fourth. The said party of the first part, for himself, his legal representatives, and assigns, agrees to defray one-half of the expenses of any suits at law or in equity that it may be necessary to prosecute or defend for the maintenance of said letters patent, or to enjoin and recover against infringers thereon; and the said parties of the second part may retain from and out of moneys becoming due to the said party of the first part, his heirs or assigns, under the terms of the second clause of this agreement, sufficient to defray the said proportion of said party of the first part, of such expenses; and the said party of the first part shall be entitled to and shall receive one-half of all sums which may be recovered in any such suit or suits.

"Fifth. The covenants of the said parties of the second part, contained in the second and third clauses hereof, shall extend to, and be binding upon, their assignees of the right, title, and interest in said letters patent, or of any undivided part thereof; and if the said parties of the second part, or their said assignees, shall at any time fail to account for and pay over when due sums accruing to the said party of the first part, his heirs or assigns, under the terms of the agreement, and shall continue in said default for sixty days after demand for payment, or if they shall fail to keep the stipulation made in clause three hereof, then, and in any such case, the party or parties so in default shall forfeit all his or their interest in said letters patent, and shall reassign the same, by proper instrument in writing, to the said party of the first part, his heirs or assigns.

"Sixth. It is further understood and agreed that the said patented bedstead shall be known as the "Everitt Bedstead," and the said parties of the second part shall so term it in their advertisements, circulars, etc.; and it is further agreed that said party of the first part shall have the right to exhibit said patented bedstead at the Centennial Exhibition to be held in the city of Philadelphia.

"Seventh. It is further understood and agreed that any improvements in said patented bedsteads which may be made by either of the parties hereto, and any letters patent of the United States obtained for such improvements, shall be held and enjoyed by said parties of the second part under and subject to the terms of this agreement; and the said party of the first part, for himself, his legal representatives, and assigns, promises and agrees that at the request and expense of the parties of the second part, or their assigns, he will obtain letters patent of the United States for any such improvements made by him, and will execute and deliver proper assignments of the title to said letters patent to said parties of the second part or their assigns.

29 "Eighth. It is further understood and agreed that if in any suit the said letters patent shall be found and adjudged invalid, or to infringe on any other patent or patents, then, and in any such case, the said parties of the second part, or their assigns, may, at their option, surrender to the said party of the first part, his heirs or assigns, all right and claim under this agreement, and thereupon

be released from their covenants herein contained, and from any and all obligations whatsoever under or concerning said agreement.

"In testimony whereof the said parties hereto have hereunto set their hands and affixed their seals, the day and date first above written.

"ELISHA E. EVERETT. [L. S.]
"HENRY S. HALE. [L. S.]
"ARTEMUS KILBURN. [L. S.]
"J. WARREN HALE. [L. S.]
"H. W. CURTIS. [L. S.]
"CHENEY KILBURN. [L. S.]
"WARREN HALE. [L. S.]

"Sealed and delivered in the presence of—
"OWEN D. ROBERTS.
"JOHN DIMMOCK."

III. That the said Hale, Kilburn & Co., as such firm, manufactured bedsteads under the said patents and agreements until on or about the 3d day of October, A. D. 1876, when the said firm and members thereof formed and entered into a corporation known as the Hale & Kilburn Manufacturing Company.

IV. That the said Hale, Kilburn & Co., by a certain assignment, dated on or about the 3d day of October, A. D. 1876, duly registered in the Patent Office at Washington, assigned to the said defendants, the Hale & Kilburn Manufacturing Co., all their rights to the said Everitt patents under the said agreement between your orator and the firm of Hale, Kilburn & Co.

V. That the said Hale & Kilburn Manufacturing Co. ever since the said assignment to them have been manufacturing bedsteads under the said assignment and Everitt patents, whereby they became bound and liable according to the said agreement to pay your orator the royalty or patent fee thereon at the rate of seven per cent. upon the wholesale prices received by them therefor, and to account to your orator in writing for the same, and to pay the same at the end of each and every month after the said assignment to them, according to the terms of said agreement between your orator and the said Hale, Kilburn & Co.; that several improvements to said patented process have been, from time to time, made by the said defendants, or some of them, which are now held by the said Hale & Kilburn Manufacturing Co. under the terms of the said agreement, which your orator, for want of knowledge, is unable to more particularly specify.

VI. That the said Hale & Kilburn Manufacturing Co. have made and sold, after the said assignment to them, divers large quantities of bedsteads manufactured according to said patents, which they have not accounted for and have refused to account for to your orator, and to pay the said royalty thereon after the same fell due and was payable under the said agreement.

VII. That your orator does not know, and cannot ascertain, excepting by a discovery from the defendants, the number of bedsteads which have been manufactured by the said defendants under the

said agreement, patent, and assignment of patent, nor the amount that remains due by the defendants to your orator by way of royalty under said agreement; that the said defendants have neglected and refused to make payment at the end of each month, as stipulated in said agreement, and have refused to allow your orator to have access to their books for the purpose of ascertaining the amount due to him under said agreement; and said defendants have continued in default for more than sixty days in not accounting for and paying over to your orator the royalty due him under said agreement, after your orator demanded of the defendants payment of the same, whereby the rights of the said defendants to your said orator's patent and the said improvements thereon were forfeited, and the said defendants have not reassigned the said patents and improvements to your orator, according to the terms of the said agreement.

VIII. That your orator has been informed and believes that the said defendants, the Hale & Kilburn Manufacturing Co., with the purpose and intent of defrauding your orator of his just rights under the said patents and agreement, have purchased from one Andrew Stark a patent issued to him, and reissued in his name, for an invention similar to that of your orator, which they pretend gives a prior right to said invention or some parts thereof. Your orator has further been informed and believes that the said defendants or their agents gave to said Stark, as the consideration of his assignment to them, the sum of one thousand dollars ($1,000), part in cash and part in the due bill of the said Hale & Kilburn Manufacturing Co., which said due bill was afterwards paid by said company, and that the said Stark thereupon made an assignment of his said patent to said Hale & Kilburn Manufacturing Co., or to some one in trust for them, which said assignment is concealed from your orator, and a suit in equity has been commenced in the circuit court of the United States for the eastern district of Pennsylvania, in the name of the said Andrew Stark, against the Hale & Kilburn Manufacturing Co., for an injunction against their further using your orator's patent in the manufacture of bedsteads and other furniture, and said defendants have called upon your orator to pay part of the expense of defending said suit, pretending that they are in fear of loss if the said Stark should succeed in getting his injunction against them; but your orator has been informed and believes and so charges that the said suit has been promoted and commenced by the said defendants themselves, or some of them, and at their expense, and that the name of the said Stark as plaintiff therein is made use of by them for the purpose of affording the said defendants an excuse to hinder and delay your orator in the collection of his said royalty, and to enable them to deprive him of his just rights under said patent, improvements, and agreement.

Your orator therefore prays equitable relief as follows:

1. That an account may be taken of all and every the bedsteads and other furniture manufactured by the said defendants under said patent and improvements after the date of the said agreement, and

of all moneys realized from the sale of the same, and that they be directed to pay to your orator what moneys shall upon such account appear to — due from them to him.

2. That the said defendants be ordered to reassign to your orator the said letters patent of your orator and all improvements thereon and all rights to use said patented invention under said agreement.

3. That the said defendants be restrained by an injunction from your honorable court from disposing of the said patent and improvements to any other person or persons than your orator, and from making or selling bedsteads or other furniture under your orator's said patent and the improvements thereon.

4. Such other and further relief as your honors may deem meet.

E. COPPEE MITCHELL,
WENDELL P. BOWMAN,
Solicitors for Complainants.

31 PHILADELPHIA COUNTY, *ss:*

I, Elisha E. Everett, the above-named complainant, being duly sworn, do depose and say: That the facts contained in the foregoing bill, so far as they are stated of my own knowledge, are true, and so far as they are stated upon information and belief I believe them to be true.

Sworn and subscribed before me this —— day of ———, A D. 1878.

32 No. 4. C. C., P. S. T., 1878.

EVERETT
v.
HALE *et. al.* } No. 564.

Enter my appearance for the defendants in above case.

OTTERSON.

10, 8, 79.

C. P. No. 4. S. '78

EVERETT
vs.
HALE *et al.* } No. 564.

Enter rule on defendants to file their plea, demurrer, or answer to the bill in equity within 30 days after service of notice of the rule. *Sec. reg.*

E. COPPLE MITCHELL AND
WENDELL P. BOWMAN,
Att'ys for Pl'ff.

Per E. J. B.

To Pro. C. P.

33 *Answer of the said Defendants.*

In the Court of Common Pleas, No. 4, for the County of Philadelphia.
In Equity. No. 564, of September Term, 1878.

ELISHA E. EVERITT *vs.* HENRY S. HALE *et al.*

The respondents say:

First. That all the allegations and averments of the said bill as contained in the first four paragraphs thereof are true, and are hereby admitted to be so. They also admit that the allegations contained in the fifth paragraph are true, except that they claim to have made improvements in the article of bedsteads, and they hold letters patent for such improvements. If these are "improvements to the patented process of plaintiff," then the averments in this paragraph of the bill are true also.

Second. It is not true as charged in the sixth paragraph of the said bill that the defendants have not accounted for, or refused to account for, any or all bedsteads manufactured by them under the said patent in pursuance of the said agreement. On the contrary, these defendants have been always ready and willing, and are now ready and willing, to account for every article so sold by them as aforesaid. And they hereto append an account of all that has been sold under the said patent since their last account was rendered, which last account was accepted by the said plaintiff without objection, and the last payment to the said plaintiff was made in pursuance of said account and a mutual settlement between them on this subject.

Respondents further say that the accounts heretofore ren-
34 dered, and in pursuance of which payments have been made, and those hereto annexed, include bedsteads which were in no sense covered by the plaintiff's patent, and the payments referred to were made by mistake. They have, however, included the same class of goods in the account annexed hereto, distinguishing them by the broad-faced type; but they protest that they are not liable to the said plaintiff for any claim of royalty on the beds so distinguished in the said account.

Third. That if it is true that the plaintiff "does not know * * * the number of bedsteads which have been manufactured by the said defendants under the said agreement, &c.," it is because he has not availed himself of the means of informing himself he has always enjoyed, and which have always been, and still are, open to him. It is true that the defendants have refused to make payments at the end of each month, but it is not true that the plaintiff has been refused access to the respondents' books for the purpose of ascertaining the amount due him under the said agreement. Statements have been regularly made for his use and information in the same manner and form as has been practised and approved by him from the commencement of the business relation referred to, and the books in which the whole account of the branch of respondents' manufactures is kept are, and always have been, open to his inspection, and have been regularly and repeatedly examined by him, and

have always been accepted as satisfactory until these respondents began to withhold the payments to him as charged.

Fourth. That it is true that the defendants have continued in default in this respect for more than sixty days in not paying over under the said agreement, but are in no default for not accounting, and they agree that they have forfeited their rights to the plaintiff's said patent, and, although they have not hitherto reassigned the same, they have caused an offer so to do to be made to the plaintiff, in person and through counsel, but it has not been accepted, and the defendants, the said Hale and Kilburn Manufacturing Company, under advice of counsel and in compliance with the prayer of the said bill of complaint, deposit herewith in the hands of the prothonotary of this court, at the time of filing this answer, a reassignment of the patent referred to, so that the said plaintiff shall thereunder have and take all his former rights and privileges, and the said reassignment is subject to his order.

Fifth. These respondents admit that they have made several improvements in the said bedsteads and that they have secured letters patent therefor. They understand the plaintiff to claim and demand an assignment to him of the patents for such improvements, as a right belonging to him under the said agreement, in case of a surrender by the defendants of the plaintiff's patent originally assigned to them. This claim they have refused to accede to, and the question of their liability to make such transfer they respectfully submit to the judgment of the court.

Sixth. They deny that the said improvements are on any of the features covered by the said patent of the plaintiff. On the contrary, they say that the said improvements are on other parts, not in any way connected with the claims of the plaintiff, and they deny the right of the said plaintiff to claim a transfer of the patents for said improvements.

Seventh. These defendants say that when they entered into the contract with the plaintiff, as stated, they did so with the understanding that the said patent was good and valid in the law, and not subject to the claims of other patents; but they have since been informed and believe that in making the said bedsteads they were infringing upon the rights of other prior patentees, against whom they were obliged to protect themselves by contracts of purchase or otherwise, or wholly discontinue the manufacture of the bedsteads which they had been making, and in the introduction of which they had expended large sums of money which they could not afford to lose. That among such patents were one to Andrew Stark, and another, or others, to Sebeus C. Maine, which covered the leading and only valuable features of the bedstead they had been manufacturing and selling; that they have purchased and taken assignments of the said Maine patents, and have contracted for the control of the said Stark patent, but they deny that the same has been assigned to them. They aver that in each instance where claimants under these patents respectively presented themselves and charged them with infringements they consulted counsel and fully informed themselves as to their legal position and their liability in

the premises, and that the whole facts were duly and properly communicated to the said plaintiff, and that he was consulted and asked to co-operate with and assist these defendants in securing the control of these patents, but he persistently refused so to do. That as a means of protecting themselves and their business, and of utilizing the large outlay they had already incurred in introducing the said bedsteads, these defendants, at great expense, secured the control of said outstanding patents, but aver that the same was done only after the necessities of the situation had been fully explained to the plaintiff and after he was solicited to participate; and they deny that the same was done fraudulently, but, on the contrary, the said purchase and contract were made in perfect good faith.

Eighth. That prior to the making of the said contract with the said plaintiff these defendants had no knowledge or information as to the existence of the said Maine and Stark patents, or either of them; bus they are informed and believe that the said plaintiff did know of their existence, as they have been informed and believe that his application for his patent was originally rejected at the Patent Office by reason of the existence of the one or the other, or both, of the said prior patents, but the plaintiff failed to communicate such facts to these defendants; and the defendants aver that because of the existence of prior patents, and for want of utility and novelty, they have been advised that the said patent of the plaintiff is useless and utterly worthless, and that their said contract with him is without consideration and void in law.

Ninth. That these defendants are not now manufacturing any bedsteads under the patent of the said plaintiff and do not propose to do so hereafter; that they confess judgment and submit themselves to a decree of the court in favor of the said plaintiff as to all the prayers of their said bill, except to that part of the second prayer which requires that they should assign to the said plaintiff the patents which they have secured for improvements of their own making in bedsteads: and, as to their liability to assign the patents they hold for the said improvements, they respectfully submit themselves to the judgment of this honorable court.

C. KILBURN, *President.*
HENRY S. HALE.
ARTEMAS KILBURN.
J. WARREN HALE.
C. KILBURN.
WARREN HALE.

PHILADELPHIA COUNTY, *ss:*

C. Kilburn, being duly sworn, says: He is president of [the] abovementioned corporation defendant; that what he has stated in the above answer of his own knowledge is true, and what he has stated upon information derived from others he believes to be true.

C. KILBURN, *President.*

Sworn and subscribed this — day of November, A. D. 1878, before me.

———— ————.

36 COUNTY OF PHILADELPHIA:

Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, being duly sworn, say that the statements made in the above answer of their own knowledge are true, and that those made on information from others they believe them to be true.

HENRY S. HALE.
ARTEMAS KILBURN.
J. WARREN HALE.
CHENEY KILBURN.
WARREN HALE.

Sworn and subscribed this —— day of November, A. D. 1878, before me.

——— ———.

Statement of Beds and Cribs Sold.

(Everitt Patent.)

JULY, 1878.

1 bed	No. 11,	Veneered	3-4,		$70 00
1 "	3,	"	3-4,		95 00
1 "	12,	"	3-4,		170 00
1 "	11,	Plain	3-4,		55 00
1 "	3,	Veneered	1-2,		85 00
1 "	3,	"	4-4,		105 00
1 "	3,	"	3-4,		95 00
1 " old style	3,	"	42 in.		85 00
1 " "	3,	"	42 in.		85 00
1 crib	3,				35 00
1 bed	9,	Veneered	3-4,		115 00
1 "	11,	"	3-4,		70 00
1 "	11,	Plain	3-4,		55 00
1 "	11,	Veneered	3-4,		70 00
1 crib	1,	"			50 00
1 "	3,	Plain			35 00
1 bed	12,	Veneered	3-4,		170 00
1 "	11,	Plain	3-4,		55 00
1 " old style	12,	Veneered	42 in.		91 00
1 "	3,	"	3-4,		95 00
					$1,686 35
Less 1-3					562 11
					$1,124 24
7 per cent.					07
Royalty					$78 69

AUGUST, 1878.

1 bed	No. 11,	Plain	3-4,		$55 00
1 "	11,	"	3-4,		55 00
1 "	12,	Veneered	4-4,		180 00
1 "	3,	"	3-4,		95 00
1 "	3,	"	4-4,		105 00
Forward					$490 00

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	Forward				$490 00
1 bed	No. 11,	Plain		3-4,	55 00
1 "	7,	Veneered		4-4,	170 00
1 "	1,	"		3-4,	130 00
1 crib	--,	Eastlake		--,	45 00
1 bed	9,	Veneered		3-4,	115 00
1 "	15,	"		3-4,	105 00
1 "	3,	Veneered		3-4,	95 00
1 "	11,	Plain		3-4,	55 00
1 "	3,	Veneered		1-2,	85 00
1 "	3,	"		1-2,	85 00
1 "	11,	Plain		1-2,	50 00
1 "	11,	"		3-4,	55 00
1 "	11,	"		3-4,	55 00
1 " old style	9,	"		42 in.	70 00
1 "	11,	"		3-4,	55 00
1 "	3,	"		3-4,	80 00
1 "	11,	Veneered		3-4,	70 00
1 "	11,	"		4-4,	75 00
1 "	11,	"		4-4,	75 00
					$2,015 00
	Less $\frac{1}{3}$				671 60
					$1,343 34
	7 per cent.				07
	Royalty				$94 03

SEPTEMBER, 1878.

1 bed	No. 11,	Plain		4-4,	60 00
1 crib	--,	Eastlake		--,	45 00
1 bed	11,	Plain		4-4,	60 00
1 "	11,	"		3-4,	55 00
1 "	11,	"		3-4,	55 00
1 "	3,	Veneered		1-2,	85 00
"	3,	"		1-2,	85 00
1 "	3,	"		4-4,	105 00
1 "	11,	Plain		3-4,	55 00
1 "	11,	"		4-4,	60 00
1 "	3,	Veneered		4-4,	105 00
	Forward				$770 00
	Forward				$770 00
1 bed	No. 11,	Plain		4-4,	60 00
1 "	3,	Veneered		4-4,	105 00
1 "	11,	Plain		3-4,	55 00
1 "	3,	Veneered		4-4,	105 00
1 " old style	9,	"		42 in.	76 00
1 "	3,	"		3-4,	95 00
1 "	11,	Plain		4-4,	60 00
1 "	3,	Veneered		4-4,	105 00
1 "	3,	"		4-4,	105 00
1 "	11,	Plain		1-2,	50 00
1 "	11,	"		3-4,	55 00
1 "	3,	Veneered		4-4,	105 00
1 "	13,	Plain		4-4,	140 00
1 "	15,	"		3-4,	110 00
1 "	11,	"		3-4,	55 00
1 "	3,	"		4-4,	105 00
1 "	3,	"		3-4,	95 00
1 "	11,	"		4-4,	75 00
1 "	3,	"		4-4,	105 00

1 "	11,	Plain	3-4,		55 00
1 "	11,	"	3-4,		55 00
1 "	11,	"	3-4,		55 00
1 "	11,	"	4-4,		60 00
1 "	3,	Veneered	4-4,		105 00
1 "	13,	Eastlake	4-4,		140 00
1 crib	3,	Plain	---,		35 00
1 bed	3,	"	3-4,		80 00
1 "	3,	Veneered	3-4,		95 00
1 bed	11,	Plain	4-4,		60 00
1 crib	3,	"	---,		35 00
1 bed	12,	Veneered	4-4,		180 00
1 "	11,	"	3-4,		70 00
1 "	11,	"	3-4,		70 00
1 "	11,	Plain	3-4,		55 00
1 "	15,	"	3-4,		110 00
1 "	11,	"	3-4,		55 00
1 "	11,	"	3-4,		55 00
1 crib	3,	"	---,		35 00
1 bed	9,	Veneered	48 in,		115 00
Forward					$3,951 00

38

Forward					$3,951 00
Credit, bed returned	No. 11,	Plain, 1-2		$50 00	
" " "	" 3,	4-4		90 00	
					140 00
					3,811 00
Less $\frac{1}{3}$					1,270 33
					2,540 67
7 per cent.					07
Royalty					$177 84

October, 1878.

1 bed	No. 11,	Plain	3-4,	$55 00
1 "	12,	"	3-4,	170 00
1 "	11,	"	4-4,	60 00
1 "	3,	Veneered	4-4,	105 00
1 "	3,	Plain	4-4,	90 00
1 "	3,	Veneered	4-4,	105 00
1 "	3,	"	4-4,	105 00
1 "	11,	Plain	3-4,	55 00
1 "	11,	"	3-4,	55 00
1 "	3,	Veneered	3-4,	95 00
1 "	11,	Plain	3-4,	55 00
1 "	18,	"	3-4,	70 00
1 " old style	3,	"	4-4, 20 per cent.,	72 00
1 "	3,	Veneered	4-4,	105 00
1 " old style	12,	"	42 in.	110 00
1 "	3,	"	3-4,	95 00
1 "	3,	"	3-4,	95 00
1 "	3,	"	3-4,	95 00
1 "	11,	Plain	4-4,	60 00
1 "	11,	"	3-4,	55 00
1 "	11,	"	3-4,	55 00
1 "	11,	Veneered	3-4,	70 00
1 "	3,	"	3-4,	95 00
1 "	11,	Plain	3-4,	55 00
1 "	11,	Veneered	4-4,	75 00
1 crib	3.	"	---,	42 50
1 bed	---	"	3-4,	95 30
Forward				$2,194 50

	Forward					$2,194 50
1	bed	No. 18,	Plain	3-4,		70 00
1	"	9,	Veneered	3-4,		115 00
1	"	11,	Plain	4-4,		60 00
1	"	11,	"	4-4,		60 00
1	crib		Eastlake			45 00
1	bed	11,	Plain	3-4,		55 00
1	"	11,	"	3-4,		55 00
1	"	14,	Walnut	3-4,		185 00
1	"	12,	Veneered	3-4,		170 00
1	"	11,	Plain	1-2,		50 00
1	"	11,	"	3-4,		55 00
1	"	11,	"	3-4,		55 00
1	"	12,	Veneered	4-4,		180 00
1	"	12,	"	4-4,		180 00
1	"	13,	Plain	4-4,		140 00
1	"	11,	"	3-4,		55 00
1	"	11,	"	1-2,		50 00
1	"	11,	"	3-4,		55 00
1	"	11,	Veneered	4-4,		75 00
1	"	11,	"	3-4,		70 00
1	"	3,	"	4-4,		105 00
1	"	3,	"	4-4,		105 00
1	"	11,	Plain	3-4,		55 00
1	"	18,	"	2-4,		70 00
1	" old style	9,	Veneered	42 in.		64 00
1	"	11,	Plain	4-4,		60 00
1	"	11,	"	1-2,		50 00
1	" old style	12,	Veneered	42 in.		120 00
1	"	11,	Plain	3-4,		55 00
1	"	11,	Veneered	3-4,		70 00
1	"	11,	Plain	1-2,		50 00
1	"	11,	Veneered	4-4,		75 00
1	"	11,	Plain	3-4,		55 00
1	"	11,	Veneered	4-4,		75 00
1	"	11,	Plain	4-4,		60 00
1	"	11,	"	3-4,		55 00
1	"	1,	Veneered	4-4,		140 00
1	"	11,	"	3-4,		70 00
1	"	11,	Plain	3-4,		55 00
1	"	3,	Veneered	4-4,		105 00
1	"	11,	"	4-4,		75 00
	Forward					$5,543 50

39

	Forward					$5,543 50
1	bed	No. 11,	Plain	3-4,		55 00
1	"	11,	"	1-2,		50 00
1	"	11,	"	3-4,		55 00
1	"	12,	Veneered	4-4,		180 00
1	"	15,	Plain	3-4,		110 00
1	"	11,	Veneered	3-4,		70 00
1	"	11,	Plain	3-4,		55 00
1	"	15,	"	3-4,		110 00
1	"	11,	"	3-4,		55 00
1	"	18,	"	3-4,		70 00
1	"	11,	Veneered	4-4,		75 00
1	"	11,	Plain	3-4,		55 00
1	crib	3,	"			35 00
1	bed	18,	"	3-4,		70 00
1	"	3,	Veneered	3-4,		95 00
1	"	18,	Plain	3-4,		70 00
1	"	12,	Veneered	3-4,		170 00
1	"	3,	Plain	3-4,		80 00
1	"	18,	"	3-4,		70 00

1 "	11, "	1–2,	50 00
1 "	11, Veneered	3–4,	70 00
			$7,193 50
Credit, bed returned, No. 3.	Veneered	3–4,	95 00
			7,098 50
Less $\frac{1}{3}$			2,366 16
			4,732 34
7 per cent.			07
Royalty			331 26

40 The decree is in these words:

C. P. No. 4. Sep., 1878. In Equity.

ELISHA E. EVERITT *vs.* HENRY S. HALE *et al.* } No. 564.

"And now, December 8th, 1878, this cause came on to be heard on bill and answer, and it appearing to the court that the said defendants, by their answer, have submitted to a decree in favor of the plaintiff as to all the prayers of the bill, except so much of the second prayer as prays for a reassignment of the improvements in the manufacture of the bedsteads mentioned in said bill:

"It is ordered, adjudged, and decreed that an account be taken of all and every the bedsteads and furniture manufactured by the defendants under the patent and improvements mentioned and referred to in the bill after the 16th day of April, 1874, and of all moneys realized from the sale of the same, and that the cause be referred to C. Stuart Patterson, Esq., as master, to take and state such account, and that the defendants pay to the plaintiff whatever money shall upon such account be found due to him, and it is further ordered that an injunction issue directed to the said defendants, commanding and enjoining them not to dispose of the said patent and the improvements thereon to any person or persons other than the plaintiff, and from manufacturing bedsteads and other furniture under the said patent, and from selling any bedstead made under said patents and improvements manufactured after the date of this decree.

"And it is further ordered that the said C. Stuart Patterson, Esq., be directed, as examiner and master in the cause, to take testimony upon the matters pending in these cond prayer of the plaintiff's bill, and report the same and the facts relating thereto, and such further decree as the court ought to make.

"With liberty for either party to apply, etc.

"Dec. 9, 1878. "M. R. I."

41 *Motion of Plaintiff to Amend Bill in Equity.*

C. P. No. 4. Sept., 1878. In Equity.

ELISHA E. EVERITT
vs.
HENRY S. HALE *et al.* } No. 564.

Mitchell & Bowman, att'y- for pl'ff.

To Pro. C. P.:

Please place above on list for Saturday, May —, & oblige

W. P. BOWMAN.

42 EXHIBIT 3.

Amended Bill.

And now, to wit, on the — day of May, A. D. 1879, on motion of E. Coppee Mitchell and Wendell P. Bowman, attorneys for plaintiff, the court grants permission to the plaintiff to make and file amendments to his bill as follows, viz:

Amendments.

Paragraph IX, to be inserted after paragraph VIII of the bill:

IX. Your orator shows that the said defendants claim that the patent of your orator is an infringement upon the said Stark patent, and that, as owners of the said Stark patent, they can manufacture folding beds substantially in the same manner as they have been doing under their said agreement with your orator and without paying your orator anything therefor. And your orator charges that the relations which existed between the said defendants and himself were such that they could not, during the existence thereof, acquire title to said Stark's patent adversely to your orator, but they must be presumed to have acted for the joint interest of all interested in the manufacture of the said folding beds under said agreement.

Prayer for relief to be added as one of the prayers of the bill, viz:

2½. That the said defendants be decreed to assign to your orator the said Stark's patent and all rights thereunder.

WENDELL P. BOWMAN,
E. COPPEE MITCHELL,
Solicitors for the Complainant.

PHILADELPHIA COUNTY, *ss:*

I, Elisha E. Everett, the above-named complainant, being duly sworn, *doth* depose and say that the foregoing amendment is not made for the purpose of vexation or delay, and that the matter of the proposed amendment is material, and could not, with reasonable diligence, have been sooner introduced into his said bill.

Sworn and subscribed before me on this — day of May, A. D. 1879.

43 ELISHA E. EVERITT
vs.
HENRY S. HALE *et al.* } No. 564.

In the Court of Common Pleas, No. 4, of the County of Philadelphia, in the State of Pennsylvania. In Equity, of September Term, A. D. 1878.

And now, January 30, 1880, the said defendants, by their attorney, Otterson, Esq., enters a rule for a commission to be issued on fifteen days' notice *sec. reg.* to take testimony on their behalf at Kansas City, in the State of Missouri, to be read in evidence on the hearing and in all proceedings in the above cause, and they name P. S. Brown, attorney-at-law, of said Kansas City, in the State of Missouri, as commissioner on their part, and they file the following interrogatories:

First. What is your name, age, occupation, and residence, and where is your place of business?

Second. Where did you reside in January and February, A. D. 1878?

44 Third. Do you know The Hale and Kilburn Manufacturing Company of Philadelphia, in the State of Pennsylvania, Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheny Kilburn, Warren Hale, or any and which of them, and under what circumstances did you form their acquaintance?

Fourth. Did you visit the city of Philadelphia in the month of February, A. D. 1878, or about that time? And, if so, please state the day of your arrival in said city and the day you called at the counting-house of said defendants, if you did so call.

Fifth. If, in your answer to the last preceding question, you shall say that you did visit the city of Philadelphia at or about the time indicated, please state if such visit was made in pursuance of any intimation, suggestion, invitation, or correspondence made to you by the defendants, or any and which of them, or by any other parties or party acting or claiming to act for them or in their behalf, and what other parties or party, or what *what* was the inducement or motive which prompted you to make that visit at that time.

45 Sixth. Previous to your said visit to Philadelphia in February, A. D. 1878, or thereabouts, did you know the parties named in the "third" of this series of interrogatories or any of them and which of them, or did you know of them, and what did you know and what was your source or sources of information?

Seventh. If you visited the said parties at their counting-house in the city of Philadelphia in the month of February, A. D. 1878, or thereabouts, please state what your purpose and motive was in making such visit, whom you saw of the said parties, what passed between you and them or any of them, and did you visit them or their place of business more than once then or shortly thereafter, and what you did?

Eighth. If you know anything more or further favorable to the defendants in this matter, please state the same fully and at large.

JAMES. OTTERSON,
Solicitor for the Def't.

46 No. 4. S. T., 1878.

EVERETT
v.
HALE. } No. 564.

Cheney Kilburn, — duly sworn, says he is president of the corporation defendant in the above case; that the master having prepared his report has given notice to the parties of his purpose to file it on the 21st day of February (instant); that the notes of the testimony with the arguments taken before the master in the case occupy 832 pages, and he is informed that the account stated by him occupies from 75 to 90 pages of closely written figures and manuscript; and that he is about having the said account printed to facilitate its examination with a view to the preparations of exceptions; and he submits that it will not be possible to make such examination within in time with the said account in manuscript, and still more so with the same in the hands of the compositors; wherefore he prays for an order of this court enlarging the time for the filing of the said report and of exceptions thereto before the master until Monday, the 14th day of March, proximo.

C. KILBURN, *Pres't.*

Sworn & subscribed the 11th day of February, A. D. 1881, before me.

CHAS. H. OTTERSON,
Notary Public.

47 [Endorsed:] No. 4. 564. S. T., 1878. Everett *v.* Hale. Filed Feb'y 12, '81. Petition for enlargment of time for filing exceptions to master's reports. And now, 2, 12, '81, on filing the within petition and affidavits, the court order that the time for filing exceptions to the master's report in this case be extended to Saturday, March 5th, 1881. M. R. T. Feb. 12, '81. Otterson.

48 C. P., No. 4. Sept., 1878. Eq.

EVERETT
vs.
HALE. } No. 564.

And now, to wit, March 9, 1881, on motion of Geo. W. Biddle, Esq., the court extend the time for filing the master's report in above case until Saturday, March 12th, 1881, in order to allow the defendants to argue their exceptions to said report before the master.

M. R. T.

Mch. 9, '81.

49 C. P., No. 4. Sept. Term, 1878.

ELISHA E. EVERITT
vs.
HENRY S. HALE *et al.* } No. 564.

The master to whom this cause was referred by the interlocutory decree, made on 8th December, 1878, respectfully reports that he held sixty-nine meetings after due notice, on 18th December, 1878, and sundry other days up to and including 10th August, 1880, at which he was attended by Wendell P. Bowman, Esq., and E. Coppee Mitchell, Esq., of counsel with the plaintiff; James Otterson, Esq., of counsel with defendants, and by the parties in person. The testimond of witnesses was taken, and a type-written copy of the stenographic report thereof is filed herewith. The cause was fully argued by the counsel above named.

The bill which was filed by Elisha E. Everitt on 24th September, 1878, makes Hale, Kilburn & Co. and the Hale & Kilburn Manufacturing Co. parties defendant, and avers that on 24th March, 1874, a patent was issued to the plaintiff for an improvement in wardrobe bedsteads; that on 16th April, 1874, the plaintiff entered into a contract in writing with Hale, Kilburn & Co., which is set out in the bill, whereby it was, *inter alia*, stipulated that his patent should be assigned to them, and that they should pay him $500; should use all reasonable efforts to promote the sale and introduction of his patented bedsteads; should pay him a royalty upon all of said patented bedsteads made and sold by them at the rate of 7 per cent. upon the wholesale prices received by them therefor, and also one-half of the net profits of the sale of rights and licenses under the plaintiff's patent, and to keep full accounts, etc., and to account and pay over at the end of each month, and that if in default for 60 days after demand of payment Hale, Kilburn & Co. should forfeit all interest in the letters patent and should reassign the same, any improvements in said bedsteads and patents therefor to be held and enjoyed by Hale, Kilburn & Co., under and subject to the terms of the contract. The bill further averred that on 3rd October, 1876, the Hale & Kilburn Manufacturing Co. succeeded Hale, Kilburn & Co., and became assignees of the patent and contract; that defendants have made and patented improvements on the plaintiff's patent, and have made and sold bedsteads under the patent and its improvements, for which they have not accounted to the plaintiff; that the defendants have refused to account or or pay; that they have refused plaintiff access to their books; that they are more than 60 days in default, and that, to defraud plaintiff, they have bought the patent of one Stark, and, as an excuse to hinder and defraud plaintiff, have caused a suit to be brought in the name of Stark to enjoin their use of plaintiff's patent.

50 The bill prays—

1. An account of all and every the bedsteads and other furniture manufactured by the defendants under said patents and improvements, and of all moneys realized from sales thereof, and a decree for payment of such sum as shall be found due the plaintiff.

2. A reassignment of said patent and improvements and rights thereunder.

3. An injunction to restrain defendants from disposing of the patents and improvements, and from manufacturing or selling thereunder.

4. General relief.

The answer, which was filed 22nd November, 1878, and amended 10th December, 1878, admits the averments of the bill as to the plaintiff's patent, the contract with Hale, Kilburn & Co., the succession of the Hale & Kilburn Manufacturing Co. to and their substitution for Hale, Kilburn & Co., submits whether their patents are for improvements to the plaintiff's patented process, denies that plaintiff has been refused access to the books, or that defendants have failed to account, and annexes an account to the answer showing a balance due to the plaintiff, admits that defendants are in default in payment to the plaintiff, offers to reassign the patent, avers that they secured the control of the Stark and Maine patents in good faith and with the plaintiff's knowledge, and charges that plaintiff's patent is void for want of novelty and utility. The answer then submits to a decree in favor of the plaintiff, except under the second prayer of the bill.

The interlocutory decree was made 10th December, 1878, after a hearing on bill and answer, and directs—

1. A reference to the master to take an account of all and every the bedsteads and furniture manufactured after 16th April, 1874, under the patent and improvements referred to in the bill.

2. An injunction as prayed for.

3. A reference to the master "to take testimony upon the matters contained in the second prayer of the bill and to report same and the facts relating thereto, and a further decree," etc.

The amendment to the bill which was allowed on May, 1879, avers that there was such a relation between plaintiff and defendants that the latter could not "during the existence thereof acquire title to said Stark's patent adversely" to plaintiff, and prays that the defendants be decreed to assign to plaintiff Stark's patent and all rights thereunder.

51 The interlocutory decree of 10th December, 1878, directs the master "to take an account of all and every the bedsteads and furniture manufactured by defendants, under the patent and improvements referred to in the bill, after April, 1874."

The defendants, by the second article of their contract with the plaintiff, bound themselves "to keep just and true books of account * * * showing the number of said patented bedsteads made and sold by them, and the prices received therefor, and showing also all rights and licenses granted under the patent, and the amount received therefor," and to pay to the plaintiff "a royalty or patent fee upon all of the said patented bedsteads made and sold by them, at the rate of 7 per cent. upon the wholesale prices received by them therefor," and also, "one-half of the net profits which they may derive from the sale of any rights and licenses in and under said

letters patent," and "to account for in writing and to pay over such sums as may be due * * * at the end of each and every month from and after the date" of the contract, viz., 16th April, 1874.

There was no subsequent verbal modification of that provision of the contract.

By the second paragraph of their answer the defendants admitted their liability to account, and annexed thereto: "An account of all the bedsteads sold under the said patent since their last account was rendered." They averred that the said "account was accepted by the said plaintiff without objection, and the last payment to the said plaintiff was made in pursuance of said account and a mutual settlement between them on that subject."

The account, as annexed to the answer, showed net sales amounting to $4,732.34, and royalty due the plaintiff thereon amounting to $331.26.

The interlocutory decree, by its direction to the master to state the account of all the bedsteads and furniture manufactured after 16th April, 1874, would seem to decide adversely to the defendants, as to their averment of an account stated and settled between them and the plaintiff, down to July, 1878; but, if the interlocutory decree were silent as to this, the master would be compelled to find that there has been no such statement or settlement of accounts, for the evidence shows clearly that from time to time, since the beginning of their business relations, the defendants have made certain payments on account to the plaintiff, which were received and receipted for by him, but there has not been between the parties such a statement and settlement of accounts as a court of equity would regard as sufficiently final and conclusive to bar a further accounting.

At the meeting of 23d January, 1879, before the master, the defendants produced four separate accounts, as follows:

No. 1. An account of sales by defendants of bedsteads they supposed they were making under the plaintiff's patent, from
52 September 4, 1874, down to and including October, 1878, showing in all $6,341.07 royalty due plaintiff.

No. 2. An account of the sales included in former accounts rendered to plaintiff in person, and upon which the defendants paid royalty, as they claim, by mistake, showing an alleged overpayment of royalty amounting to $463.46.

No. 3. An account of further sales made by defendants of the articles they claimed to be exempt from royalty, but which had not been hitherto accounted for except in their answer, showing royalty amounting to $472.03.

No. 4. A statement of the payments made by the defendants to the plaintiff on account of royalty since the signing of the contract and amounting to $6,080.10.

Mr. Owen D. Roberts testified that these several accounts were prepared by the defendant, H. S. Hale, and that he, Mr. Roberts, had compared them with the books and found them correct, with certain exceptions specified on page 130 of the testimony, which showed a further sum of $64.08 to be due to the plaintiff by way of royalty. But, on page 184, Mr. Roberts explains that he had not

verified all the items of the account for whose correctness he vouched.

The plaintiff employed Mr. Frederick L. Hoffman, a competent and experienced mercantile accountant, to make an examination of the books of the defendants and extract from them a statement of the account showing the defendants' sales under the patent and improvements and the amount of royalty due to the plaintiff. That detailed account ("Exhibit 5") was put in evidence on the plaintiff's behalf before the master, and shows sales by the defendants amounting to $215,639.20, upon which it was claimed the defendants ought to pay royalty. The defendants objected to Mr. Hoffman's account, and Mr. Roberts, their book-keeper, pointed out alleged errors amounting to $17,956.85, which the defendants claimed should be deducted from the total sales charged against them. They also contended that Mr. Hoffman's account was altogether unreliable. The books of account, as kept by the defendants, were produced under the plaintiff's call and put in evidence, and among those books was "Exhibit 10," the defendants' account of their sales of bedsteads, as prepared for the plaintiff's inspection.

As preliminary to the stating of the account certain questions must be passed upon. The defendants, by their contract with the plaintiff, bound themselves to pay a royalty "at the rate of seven per cent. upon the wholesale prices received by them therefor." The defendants contended that they were entitled under this provision of the contract to deduct from the wholesale prices received by them or their agents thirty-three and a third per cent., in order to make what they termed the net wholesale price upon which the plaintiff's royalty was to be calculated, and they based this claim upon their practice in billing goods to their branch stores at a discount of thirty-three and a third per cent. Mr. Roberts states this on pages 147, 155, 173, and 206 of the testimony. (See also "Exhibit 10.")

53 On page 210 of the testimony Mr. Roberts admitted that all sales to furniture dealers were wholesale sales, whether one or more articles was sold at a time.

It is clear that the defendants were bound to account, not for the actual price received, but for the wholesale price, and that the wholesale price meant the price at which the particular article was or would be sold to a wholesale dealer buying from them. The transactions between the defendants in Philadelphia and themselves in New York, or between the defendants in Philadelphia and their agents in Baltimore, Boston, or Chicago, which were simply consignments at nominal prices, can furnish no fair rule for the establishment of the wholesale price; but this is put beyond question by the defendants' price lists and discount sheets. Exhibits 8, 9, and 29 show that the defendants fixed their wholesale trade prices at ten per cent. discount, and five per cent. extra for cash.

The master would, therefore, in stating the account, charge the defendants with the actual price admitted by them to have been received where the transaction appeared to have been on a wholesale basis, and with ten per cent. less than the actual price received where the transaction appeared to have been a retail one; but as the plaintiff in his claim ("Exhibit 5") submits to an uniform discount

of ten per cent., the master has made that deduction from the total sales.

It was, in the next place, contended by the defendants that they were not bound to account for anything more than the mere frame of the bedsteads sold by them; that the springs were not an essential and integral part of the bedsteads manufactured under the plaintiff's patent, and that they were not bound to account to him for any royalty upon the springs. It is, perhaps, sufficient to say upon this point that the bedstead without springs would not be in a fit condition for the reception of a mattress, because the bottom of the bedstead is a board, which would not bear the weight of a mattress. The defendants' price lists (Exhibits 6, 7, 12, and 13) show that they advertised that none of the plaintiff's bedsteads were sold without springs; and the testimony of most of the witnesses, expert and others, shows, and the master finds, that the springs were an essential part of the bedstead as such, and that a peculiar form of springs was manufactured for the plaintiff's bedstead.

A question was also made in regard to the liability of the defendants to account for bedsteads finished with mirrors, or with ebony stripes. The contract fixes the royalty, not at a precise sum per bed, but at a percentage upon the price received therefor. This obviously looked to a variance in styles and finish of bedsteads, and a difference in the price to be received therefor. A bedstead would not be any the less a bedstead under the plaintiff's patent because it had a mirror instead of a wooden front, or an ebony instead of a walnut finish. The master therefore holds that the defendants are bound to account for all bedsteads made by them under the plaintiff's patent, however finished and ornamented, and for the springs.

Certain minor questions were raised with regard to some of
54 the details of the account. The defendants charged the plaintiff with $162.50 for fees paid in August, 1874, to Messrs. Collier, Harding, and H. W. Beadle & Co. for opinions upon this patent with regard to the plaintiff's non-infringement upon the Maine patent, and they sought to justify this charge under article 4 of the contract, whereby the plaintiff bound himself to defray "one-half of the expenses of any suits at law or in equity that it may be necessary to prosecute or defend for the maintenance of said letters patent, or to enjoin and recover against the infringers thereon." This provision of the contract furnishes no justification for the charge. There is no evidence to show that the plaintiff agreed to pay for those opinions. For these reasons that charge is disallowed.

The defendants also charge the plaintiff with certain disbursements, amounting to $58.50, with regard to the Centennial stand. The plaintiff did not agree to those disbursements, and that item of charge is, therefore, disallowed.

The plaintiff claims from the defendants one-half of certain sums for royalty received from different parties. The second article of the contract bound the defendants to pay "one-half of the net profits which they may derive from the sale of any rights and licenses in and under said letters patent."

The defendants' accounts admit their receipt of those sums as

claimed, and the testimony of Mr. Roberts (page 157) supports the plaintiff's claim. The master has, therefore, charged the defendants with one-half the sums so received.

The plaintiff's claim, as made by the account prepared by his expert, Mr. Hoffman, charges that the defendants have made sales amounting to $215,639.20. From this the plaintiff has deducted the wholesale trade discount of ten per cent., $21,563.92, leaving a balance of $194,075.28, upon which the seven per cent. royalty amounts to $13,585.27. The plaintiff admits payments on account amounting to $6,225.72, and claims a balance due of $7,359.55.

The defendants' several accounts (Exhibits 1, 2, 3, and 4, "Exhibit 10," and the exhibit annexed to the answer) differ from each other and from the plaintiff's claim. The master being charged with the duty of taking and stating the account has not held himself bound by either the plaintiff's or the defendants' statements of the account, and he has, therefore, been compelled to examine the books and state the account therefrom.

The plaintiff and defendants having agreed that the defendants should be the accounting parties, the presumption is that the account as kept in their books is, in the absence of evidence to the contrary, correct as to the items and amounts stated in the original entries, and the burden is on the plaintiff to prove errors or omissions; but, on the other hand, those entries as items of charge constitute admissions against the interest of the defendants, and the burden is on them to show that they have in any particular instances erroneously charged themselves.

The defendants' principal manufactory and place of business was in Sixth street, in the city of Philadelphia. In addition to
55 this, they had branch stores in New York, and agencies for the sale of their goods in Boston, Baltimore, Chicago, Albany, and Pittsburgh.

Mr. Roberts, their chief book-keeper, explains, on page 142, the defendants' course of business as follows:

At the Philadelphia store, when an order was given by a purchaser, it would be entered on the order-book. If payment was made at the time the order was given, the cash received would be entered in the petty cash book. If the bill was to be charged, it would go from the order book to the sales book, and thence to the journal and the ledger. Cash payments for bills charged would be entered on the cash book, and thence taken to the ledger. Where goods were ordered, but, for any reason, other than an express countermand, the transaction was not consummated, there would be no mark of delivery upon the order book. Delivery was marked upon the several orders by a cross like this: +; but where the order was expressly countermanded there would then be a cross like this: X. It appears to have been the usage of the delivery clerks to make these marks, not in ink, but in lead pencil. From this it would seem to follow that in the practice of the defendants entries in the sales and cash books, and in the order books only when marked +, would show the sales of goods from the Philadelphia store, and the prices received by them therefor.

With the branch stores and agencies, a merchandise consignment account was kept at the Philadelphia store, and all goods consigned for sale to these branch stores and agencies were charged to that account. At the end of each month, from the weekly returns from the different branch stores, an account was obtained of the goods that were actually sold at those stores, and by a journal entry that amount was transferred from the merchandise consignment account to the regular merchandise sales account.

The defendants appear to have consigned goods to their New York store and agencies at certain rates of discount, varying from thirty-three and one-third to forty-three per cent. The New York store accounted to the Philadelphia store for the actual price at which the goods were sold; but the agencies appear to have accounted to the defendants for the billed price, and to have been allowed to retain any profit over and above the billed price.

In stating the account, the master has, in the first instance, taken Exhibit No. 5 as containing a detailed statement of the items of sales by the defendants, upon which the plaintiff claims royalty. He has compared that account, item by item, with Exhibit 10 and Ex-Exhibits 1, 2, 3, and 4. He has treated the items in the last-named five Exhibits as constituting admissions by and against the interest of the defendants, and, when unexplained, as furnishing proof that the particular sale to which the item refers was made, but he has referred in every possible case to the book of original entry for the price at which the sale was made. In some instances it has not been possible so to refer, because the defendants' Exhibits 1, 2, 3, 4, and 10 do not always give the needful reference. The plaintiff's Exhibit 5 contains some duplicated entries. The master has endeavored to eliminate all duplicates. He has marked, in Exhibit 5, with a red cross, every item that he has charged against the defendants, and with a red O every item that he has rejected. He has marked, in Exhibit 10, with a red tick, each item that he has found in Exhibit 5. He has charged the defendants with every item marked in Exhibit 5 with a red cross, and also with every item in Exhibit 10 not marked with a red tick, and wherever his examination of the original entry of any sale has required an alteration of the price stated in Exhibits 5 or 10 he has noted in red ink the price as found by him.

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The master has stated the prices realized by the sales in New York from the weekly returns from the defendants' New York store, and not from the invoices thereto, making deductions for mattrasses.

The statement of the account, upon the principles and methods indicated, has necessarily been a slow and laborious process. Its difficulty has been largely increased by the manner in which the defendants have kept their books. It was their duty, under their contract with the plaintiff, to keep "just and true" accounts, showing their sales and the prices received therefor in detail. This they have not done, but, on the contrary, they appear to have sytematically confused the record of their sales under the contract, so as to unlawfully increase their profits and diminish the plaintiff's royalty, and they have, in their several accounts, as stated for the mas-

ter, persistently understated the actual prices realized from their sales, and they have omitted some sales.

The master annexes hereto, marked "Exhibit A," a detailed account, showing the date and amount of each sale with which he has charged the defendants, and with a reference for each item to the defendants' books.

There is no record in the defendants' books, and no evidence in the cause, that the defendants have manufactured any bedsteads under the plaintiff's patent, other than those which they have sold.

The contract requires the defendants "to pay over such sums as may be due * * * at the end of each month." The master has therefore stated (and annexes, marked "Exhibit B") an account charging the defendants with their several monthly totals of royalty, and crediting them with their several payments on account, and debiting and crediting them with interest to the date of the interlocutory decree.

Upon the account so stated the master finds and reports that there is due by the defendants to the plaintiff the balance stated therein.

The interlocutory decree of 10th December, 1878, directed the master "to take testimony upon the matters contained in the second prayer of the bill, and to report the same and the facts relating thereto and a further decree."

The second prayer of the bill is, "that the said defendants
57 be ordered to reassign to your orator the said letters patent of your orator, and all improvements thereon, and all rights to use said patented invention under said agreement."

The amendment to the bill avers that there was such a relation between the plaintiff and the defendants that the latter could not, "during the existence thereof, acquire title to said Stark's patent adversely to plaintiff," and prays that "the defendants be decreed to assign to the plaintiff Stark's patent and all rights thereunder."

Under the terms of this reference the master reports the following facts:

The plaintiff is the inventor of a folding wardrobe-bedstead; that is to say, a bedstead so constructed that, when not in use as a bed, it can be folded up and present the appearance of a wardrobe. The peculiarity of the plaintiff's invention appears to be a hinged footboard in combination with side brackets raised above the side rails, and forming, when the bed is elevated, the side guards for the pillows and bed-clothing.

On nineteenth November, 1873, the plaintiff filed in the Patent Office of the United States his petition for letters patent for an improvement in wardrobe-bedsteads. His application was rejected on twenty-second November, 1873, again on third December, 1873, and again on twelfth December, 1873, and as grounds of rejection the Patent Office examiner referred to prior patents, supposed to cover the same subject-matter, granted on August twenty-second, 1865, to A. Stark; on fifteenth June, 1865, to S. C. Maine; on sixth September, 1870, to Davis & Romminger, and on twenty-eighth May, 1872,

to H. Goodrich. The objections of the examiner were, however, overcome by successive amendments to the specifications of claim, and on twenty-fourth March, 1874, letters patent were granted to the plaintiff numbered 148,940, and specifying the invention as hereinbefore set forth.

Mr. Daniel Connolly was the plaintiff's patent solicitor, and as such filed his petition and the subsequent amendments of the specifications, which were necessitated by the successive rejections of the application. Mr. Connolly necessarily had notice of the reasons upon which those objections were based, and of the existence of the several prior patents referred to by the Patent Office examiner, including the Stark patent. Notice to Mr. Connolly was, of course, notice to his client, the plaintiff, who, whether he did or did not in fact know, must be conclusively presumed to have known of those prior patents.

On 16th April, 1874, the plaintiff entered into a written contract with the defendants, Hale, Kilburn & Co., which is set forth in full in the bill. That contract was drawn by the Messrs. Howson, solicitors employed by the defendants. In the making of that contract the parties thereto dealt at arms' length. There was no relation of confidence between them, and the maxim *caveat emptor* applies. Mr. Henry Howson, then the defendants' learned and competent adviser in patent law, was clearly of this opinion, for he testified, on page 281 of the testimony, that he scolded Mr. Kilburn for signing the agreement with the plaintiff without
58 previously having an examination made into the state of the art, and he then had a search of the Patent Office records made by his Washington clerk. That search, dated 17th April, 1874, (the day after the date of the contract, "Ex. 55,") states that the plaintiff's patent had been rejected on reference to the patents of Davis & Romminger, H. Goodrich, and S. C. Maine, but makes no mention of the Stark patent. Nevertheless the clerk's report was notice to Mr. Howson, and, therefore, notice to his clients, the defendants, that the plaintiff's patent had been rejected, and that the reasons for the rejection were on file in the Patent Office. If the defendants had inquired they would then have learned of the existence of the Stark patent, and they would doubtless have concluded at that time, as they did at a later date, "that the Stark patent was not really of itself available—that is, it could not be a saleable article as it stood;" (H. S. Hale's testimony, p. 242,) and "that the plaintiff's patent did not infringe upon the Stark patent as it had been originally granted." (Mason's testimony, p. 525.)

There is nothing to show that the plaintiff, as an inducement to the making of the contract, made any representation to the defendants in regard to the existence or nature of prior and subsisting patents for the same or a similar subject-matter.

The defendants, after Mr. Howson's search had been made, caused the contract to be recorded, on twentieth April, 1874, in the Patent Office, in liber T., p. 443, of Transfer of Patents.

The eighth paragraph of the answer avers:

"That prior to the making of the said contract with the said

plaintiff these defendants had no knowledge or information as to the existence of the said Maine and Stark patents, or either of them, but they are informed and believe that the said plaintiff did know of their existence, as they have been informed and believe that his application for his patent was originally rejected at the Patent Office by reason of the existence of the one or the other, or both, of the said prior patents, but the plaintiff failed to communicate such facts to these defendants; and the defendants aver that because of the existence of prior patents, and for want of utility and novelty, they have been advised that the said patent of the plaintiff is useless and utterly worthless, and that their said contract with him is without consideration and void in law."

The interlocutory decree having directed the defendants to account under the contract, it would seem that it is not, at this stage of the cause, open to them to set up, by way of defence, the alleged invalidity of the contract as resulting from fraudulent concealment or misrepresentation on the part of the plaintiff, or from want of consideration.

But, if the question were open, it must be held that the prior rejection of the plaintiff's patent cannot affect its validity as subsequently granted. All of the patent solicitors who were called in the case, Messrs. Howson, Connolly, Holloway, and Mason, agreed in testifying that it is not unusual for an application to be rejected several times before it passes the ordeal of the Patent Office.

59 Apart from that, it is clear that a patent, when granted, is *prima facie* evidence of the novelty and usefulness of the invention, and that State courts have not jurisdiction to determine as to the validity of a patent, or to decide a question of infringement. (United States act of 4th July, 1836, paragraph 17; 5 Statutes at Large, page 117; Revised Statutes of the United States, section 711.)

It may also be said that that averment of the answer is scarcely consistent with other public and private expressions of the defendants' opinion of the plaintiff's patent. In their advertisement in the Public Ledger of 3rd October, 1874 ("Ex. 21") they announce that they will display at the Franklin Institute "their new parlor bedstead and crib, made upon an entirely new principle," and they add: "This has been acknowledged by experienced and competent judges to be superior to any other folding bed ever invented." In their descriptive circular of 1st September, 1876 ("Ex. 13"), they say: "The champion," meaning thereby the plaintiff's bedstead, "heads the list of folding bedsteads, and cannot be approached by any." In their circular of 10th September, 1878 ("Ex. 12"), they say that the bedstead manufactured under the plaintiff's patent and their improvements "is beautiful in appearance," "simple but durable in construction," "easy to manipulate," and "the most perfect thing of its kind in existence." They also add that the first folding bedstead made by the defendants "in the fall of 1874 was considered a model of ingenuity and mechanical skill." In the defendants' advertisement in the Philadelphia Record of 29th March, 1879 ("Ex. 23") they claim for the bedstead the "only Centennial award." In their ad-

vertisement in the same journal on twenty-fourth January, 1880 ("Ex. 69") they say: "Entire world challenged; warranted the best; nearly five thousand in use." In their letter of twenty-seventh February, 1878, to their patent solicitors, D. P. Holloway & Co. ("Ex. 77," p. 508), they say: "We must get clear from Everitt, if possible, and we prefer not to alter the bed if it can be avoided." In their letter of twenty-eighth February, 1878 ("Ex. 78," p. 509), to Mr. Mason, a member of the firm of D. P. Holloway & Co., they say: "The bed is just splendid as it is." In the face of these declarations the defendants cannot now be heard to object that the plaintiff's patent is lacking in "utility and novelty."

By the contract it was, *inter alia*, stipulated that the plaintiff's patent should be assigned to the defendants; that they should pay him five hundred dollars; should use all reasonable efforts to promote the sale and introduction of his patented bedsteads; should pay him a royalty upon all of said patented bedsteads made and sold by them at the rate of seven per cent. upon the wholesale prices received by them therefor, and also one-half of the net profits of the sale of rights and licenses under the patent; should keep full accounts, etc.; should account and pay over at the end of each month; if in default for sixty days after demand for payment should forfeit all interest in the letters patent and should reassign the same to the plaintiff, and any improvements in said bedsteads and patents
60 therefor should be held and enjoyed by the defendants, under and subject to the terms of the contract.

In August, 1874, the defendants took the opinion of Charles B. Collier, Esq., and, through George Harding, Esq., the opinion of H. W. Beadle & Co., patent solicitors, in Washington, and were advised by those gentlemen that the plaintiff's patent did not infringe upon the Maine patent. (Exhibits 45 and 46.)

Shortly after the execution of the agreement with the plaintiff, the defendants appear to have begun the manufacture of his beds, and their first sale was made in the month of September, 1874.

On the third of October, 1876, the Hale & Kilburn Manufacturing Company, also a defendant, was organized, and was thenceforth successor to and was substituted for Hale, Kilburn & Co.

The account, as stated by the master (post "Exhibit A"), shows the amount of the defendants' sales under the plaintiff's patent and their contract with him.

The defendants appear to have made regular monthly payments on account of his royalty until January, 1877, when they demanded and he refused to give receipts in full settlement to date, and during some portion of the period before 1877 the plaintiff seems to have been in their debt, according to their statement of the account. In July, 1877, the defendants refused to pay royalty on certain styles of bedsteads, which they distinguished as Nos. 10 and 11, although the bedsteads so numbered were marked as being made under the plaintiff's patent. They afterwards paid royalty on these bedsteads and wrote to the plaintiff on the eleventh October, 1877, withdrawing their objections. ("Ex. 76.") From that time until April, 1878,

the royalty, to the amount admitted by the defendants, seems to have been paid with regularity.

The second article of the contract bound the defendants "to keep just and true books of account to be open at all reasonable times to the inspection" of the plaintiff, "showing the number of said patented bedsteads made and sold by them and the prices received therefor, and showing also all rights and licenses granted under the patent and the amount received therefor."

The defendants attempted to comply with this provision of the contract by keeping a book for the plaintiff's inspection ("Exhibit 10"), into which were copied from time to time by the defendants such entries from their books of original entry as, in their opinion, the plaintiff was entitled to see. But the plaintiff was not permitted at any time to have access to the defendants' books of original entry. From the account as furnished to the plaintiff the defendants omitted the springs, which are an essential part of the bedstead, and the bedsteads finished with ebony or mirrors; they understated the prices realized by their sale, and they made an uniform and unauthorized deduction by way of discount from the wholesale prices actually received by them. The account so stated to the plaintiff's prejudice was the basis on which the defendants estimated and made payments on account of his royalty.

The sixth article of the agreement between the plaintiff and the defendants stipulated:

61 "That the said patented bedstead shall be known as 'The Everitt Bedstead,' and the said parties of the second part (the defendants) shall so term it in their advertisements, circulars, etc."

The defendants appear to have persistently violated this article of their agreement. In their price list of thirtieth July, 1877 ("Exhibit 6"), they mention "The Champion Folding Bedstead and Crib," patented twenty-fourth March, 1874; tenth February, 1875; twenty-second August, 1876; nineteenth September, 1876; and in very small type they also give the article so advertised the name of "The Everitt Bedstead." In "Exhibit No. 7," their price list of tenth September, 1877, they advertise "The Champion Folding Bedstead and Crib," and make no mention of the plaintiff. In their advertisement in the "Trade Bureau," of twenty-second March, 1879, they describe "The Champion Folding Bed," but omit the mention of the plaintiff's name; and so also in their advertisement of fifteenth March, 1879, in the "American Cabinet Maker." In their advertisement of third October, 1874, in the Philadelphia "Public Ledger," they state that they will display at the Franklin Institute their new parlor bedstead and crib, made upon an entirely new principle, and they omit all mention of the plaintiff's name. So, also, in the "Fair Messenger of the Baptist Home," of twenty-seventh October, 1877; so, also, in the "Philadelphia Record," of twenty-ninth March, 1879; so, also, in the "Trade Bureau" of twelfth April, 1879; so, also, in the "American Cabinet Maker and Upholsterer," of thirteenth May, 1876.

The plaintiff does not, in this proceeding, seek any remedy for the defendants' violation of contract with regard to the non-adver-

tisement of his name as the inventor of the bed; but that action upon the part of the defendants is relevant and material in this controversy as evidence of a purpose upon their part to appropriate to themselves the benefit of the plaintiff's invention, and is very consistent with their treatment of the plaintiff in other respects.

As the sales of the bedstead increased, and the amount of the plaintiff's royalty grew in like proportions, the defendants seemed to have formed the purpose of compelling his reduction and ultimate relinquishment of even the unfairly diminished royalty which they then allowed him. In July, 1877, the defendant, C. Kilburn, asked the plaintiff to reduce his royalty from 7 to 3½%, and, on his refusal, Mr. Kilburn threatened that the defendants would stop the manufacture, or make only enough to hold the bed, and keep others from making it.

On fourth November, 1875, one Asher B. Stevens, a mechanical inventor, had entered into a written contract with Hale, Kilburn & Co. ("Exhibit No. 66"), whereby, *inter alia*, it was stipulated that Stevens should devote so much of his time and energies as said Hale, Kilburn & Co. may deem desirable to the perfection and full development of such inventions and improvements as they may desire an interest in. In the summer of 1877 the same Mr. Cheney Kilburn told Stevens that the defendants were paying a heavy royalty on the plaintiff's bed, and directed him to get up a new bedstead.

62 At some time prior to December, 1877, the defendants had consulted and retained as their counsel Mr. D. Rodney Mason, of the Washington bar. Mr. Mason was called by the defendants as a witness in the case. He was examined on their behalf as to the professional advice which he had given to the defendants with regard to the purchase of the Stark patent and their relations to the plaintiff. After he had been examined the plaintiff called Mr. D. P. Holloway, who, though not a member of the bar, was Mr. Mason's partner and acted with him for the defendants in the transaction of their patent business. Mr. Holloway produced a number of letters from the defendants to his firm and to Mr. Mason relating to the defendant's professional business with Mr. Mason. The admission of those letters was objected to on the ground that they were confidential communications, and protected by the rule which forbids counsel to testify as to their clients' confidential communications. It is undoubtedly true that if Mr. Mason had not been called by the defendants as a witness on their behalf and examined by them as to his confidential communications with them, the letters in question when produced by Mr. Holloway would not have been admissible in evidence, Taylor *vs.* Foster, 2 C. & P., 195; Foote *vs.* Hayne, 1 Id., 545, nor could the defendants have been compelled to produce these papers, Minet *vs.* Morgan, Law Reports, 8 Chancery appeals, 361.

But the defendants, having called Mr. Mason and having examined him as to their confidential consultations with him, cannot insist upon the exclusion of that correspondence between Mr. Mason and themselves which tests the accuracy of his testimony.

Mr. Mason testifies (page 540) that before December, 1877, he had

advised the defendants how they could manufacture the folding bed and avoid any pretense of infringing upon the plaintiff's patent.

In the latter part of December, 1877, Mr. Stevens, having completed the model of his proposed bedstead, showed it, at the defendants' request, to Mr. Mason, and that model appears to have met Mr. Mason's approval, for, on the twenty-eighth February, 1878, Mr. Mason wrote to the defendants (see page 623 of the testimony) advising them to discontinue the use of the Everitt patent and expressing his approval of Mr. Stevens' invention as avoiding any infringement upon Mr. Everitt.

In the course of his examination of the subject of folding bedsteads Mr. Stevens saw a drawing of the Stark bedstead in the Patent Office reports and showed that drawing to the defendants. He was directed by them to open communications with Mr. Stark, but before he had accomplished that, about ninth February, 1878, Mr. Stark came into the defendants' office, having seen their advertisement of The Champion Bed in Lippincott's Magazine. Mr. Stark testified that he was of the impression that the bedstead advertised by the defendants might be an infringement upon his patent, and that he visited the defendants without having had any prior acquaintance or correspondence with them or with any person acting for or in any way representing them.

63 Mr. Mason testifies (page 525) that the plaintiff's patent did not infringe upon the Stark patent as it had been originally granted, but that the Stark patent was susceptible of being reissued in such shape as would entirely cover the Everitt bedstead. Mr. Mason also testified (page 541): "I made what was intended to be, and what I suppose was, a very thorough examination—an exhaustive one of the state of the art as it existed at the time. It was necessary to do so in order to determine whether Stark could reissue his patent so as to cover the Everitt bed."

Mr. Henry S. Hale, one of the defendants, testifies (page 242): "We" (that is, the defendants,) "decided that the Stark patent was not really of itself available; that is, it could not be a saleable article as it stood, as there were no weights in his patent, and the bedstead had to be lifted by main strength."

On the twenty-third of February, 1878, the defendants, at their Philadelphia office, bought his patent from Mr. Stark for one thousand dollars, paying him two hundred dollars in cash, and giving their due bill for eight hundred dollars, which was subsequently paid by them in instalments. Mr. Henry S. Hale testifies (page 242) that the defendants bought the Stark patent with the understanding that it was to be reissued.

The master, therefore, finds as a fact that the defendants bought the Stark patent, not for the purpose of protecting the Everitt patent against a possible suit for infringement, but for the purpose of so using the Stark patent as to defeat the plaintiff's claim for royalty.

On twenty-third February, 1878, the day of their purchase from Mr. Stark, the defendants wrote to Mr. Mason: "Mr. Stark says his footboard does not turn the corner like Everitt's, except that it don't form much of a place for pillows. Have you seen his model? Per-

haps it would be well to take a look at it." ("Exhibit 93," page 606.)

This letter, taken in connection with Mr. Mason's testimony, shows that he had examined the Stark patent before the defendants purchased.

Mr. Stark executed in the defendants' office, at the time of their purchase on twenty-third February, 1878, an informal assignment of his patent to the defendants, which was subsequently destroyed in Washington.

Mr. Mason then, as counsel for the defendants, drew a petition for the reissue to the defendants of the Stark patent and a formal assignment of the patent to the company defendant. These papers were sent to the defendants, in Philadelphia, for execution, for, on twenty-seventh February, 1878, the defendants wrote to Mr. Mason's firm, D. P. Holloway & Co.: "Enclosed please find our check for eighty dollars for fees in Stark's reissue case. We also return herewith all the papers signed as requested, together with the original patent and the assignment to be recorded. We would like to ask you one question: If you secure the claims as stated in the specifications will we not then be free from Everitt without altering the construction of our bed at all? We must get clear from Everitt, if possible, and we prefer not to alter the bed if it can be avoided. We think
64 you understand our position and will act accordingly." ("Exhibit 77," page 598.)

Mr. Stevens took this letter and its enclosures to Washington, the defendants having led him to believe that they would make use of his modification of the Everitt bedstead. He saw Mr. Mason on the morning of twenty-eighth February, and Mr. Mason then wrote his letter of that date, in which he expresses his approval of Mr. Stevens' invention. But while Mr. Stevens and Mr. Mason were consulting in Washington, the defendants wrote their letter of twenty-eighth February, 1878 ("Exhibit 78," p. 599), in which they say:

"Mr. Stevens left for Washington last night, and took with him Stark's papers and check. You understand, we suppose, that if Stark's patent can be make to cover Everitt, we do not care to make any alterations in the bed, or adopt any of Mr. Stevens' plans. The bed is just splendid as it is, and we hope you can fix us all right."

Mr. Mason at that interview showed Mr. Stevens the contract between the plaintiff and the defendants, and Mr. Stevens claims the credit of having called attention to its eighth article, which provides: "That if in any suit the said letters patent shall be found and adjudged invalid, or to infringe on any other patent or patents, then, and in any such case, the said parties of the second part, or their assigns, may, at their option, surrender to the said party of the first part, his heirs or assigns, all right and claim under this agreement, and thereupon be released from their covenants herein contained, and from any and all obligations whatsoever under or concerning said agreement," and of suggesting that the Stark patent be reissued to him, Stevens; that he bring suit against the defendants for their infringement by manufacture under the Everitt patent, and that when a decree in this sham suit should have been entered against

the defendants they could surrender his then worthless patent to the plaintiff and be released from their obligations to him. Mr. Mason was so much impressed by this ingenious scheme that he consented to withhold from record the assignment and petition for reissue of the Stark patent to the defendants until he should receive the defendants' further instructions. Mr. Stevens returned to Philadelphia on the night of the twenty-eighth February, and on the morning of first March, 1878, he communicated his plan to the defendants, whereupon the defendants telegraphed to D. P. Holloway & Co.: "Wait till you hear from us before recording Stark's assignment" ("Exhibit No. 79," page 600); but the defendants, doubtless fearing that Mr. Stevens, though sufficiently unscrupulous, was too clever to serve their purposes, determined to adopt Mr. Stevens' plan of a collusive suit for infringement, but to make Mr. Stark the plaintiff therein, and for that purpose to have his patent reissued to himself and secretly assigned to them. They appear to have laid the plan before Mr. Mason, for, on fourth March, 1878, he wrote to them (page 622):

"Your case has been suspended as directed. I think the
65 best course would be to return the assignment to Stark, and have him execute the application for reissue, as the sole owner, and then make an assignment with subsequent date. This need not be recorded immediately, and in the meantime, he, having attained his reissue, should call on you for settlement, and you call on Everitt to make his title good, or release you from ropalty, or make a fair reduction of same."

On sixth March, 1878, the defendant, C. Kilburn, Stevens, Stark, Holloway, and Mason met in the office of the latter in Washington. Kilburn and Mason then informed Stevens that his model would not suit their purpose, and that the Stark patent must be reissued in Stark's name. Stevens had, on twenty-eighth February, delivered to Mason the assignment by Stark to the defendants, and the petition by Stark for a reissue to them. The petition was in Mason's handwriting. It was signed by Stark at the end of the specifications, and dated twenty-seventh February, 1878, and it was witnessed by Robert and J. B. Kilburn, who had on the last-mentioned date subscribed to it. To change it, so that it would pray for a reissue to Stark, it was necessary to tear off its first page and substitute a new page, with this amended prayer. This was done, and the new page was then written by Mr. Holloway. A new jurat was also added, and Mr. Stark was sworn on 6th March, 1878. Stark's petition for reissue was filed in the Patent Office on fourteenth March, 1878. He had sold his patent on twenty-third February to the defendants, but in his petition he describes himself as the sole owner of the patent; and he states that he verily believes that, by reason of an insufficient and defective specification, his letters patent are inoperative or invalid; that said error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention; and that he verily believes himself to be the first and original inventor of the improvement set forth and claimed in his amended specification. The specifications are apparently skilfully drawn so as to cover the

Everitt patent, and constitute it an infringement upon the Stark patent, reissued. Whether or not they succeed in accomplishing this result is immaterial in this case.

Stark's application for a reissue was granted, and is numbered 8161, and dated ninth April, 1878.

On sixth March the old assignment from Stark to the defendants was burned, and a new assignment from him to the defendants was drawn and executed by Stark, and received by Mr. Mason on behalf of the defendants from Stark on seventh March, 1878. Mr. Mason appears to have held this assignment in his custody until twenty-seventh December, 1878, when he delivered it to the defendants, and it was recorded sixth January, 1879, in the Patent Office at Washington, in liber T, 23, page 70. Mr. Mason, when on the witness stand, endeavoring to justify his action in regard to the filing of the Stark petition for reissue, by stating that he had held the Stark assignment in escrow, and that it never was technically delivered to the defendants, nor did title vest in them until twenty-seventh December, 1878, but as the defend-
66 ants had bought and paid for the Stark patent on twenty-third February, 1878, and as Mr. Mason was paid by them, and was acting for them in the Stark application for reissue, it is clear that the delivery of the Stark assignment to him on seventh March, 1878, was a delivery to his clients, the defendants, and that their equitable title to the patent vested on the day of its purchase, namely, twenty-third February, 1878, and their legal title on seventh March, 1878.

On the fourth of March, 1878, the defendants wrote to Mr. Mason:

"Our royalty to Everitt becomes due on the tenth instant. What do you think about notifying us that we infringe on Clark, so we can have an excuse for postponing the payment of said royalty? You may think best about notifying Everitt also. We judge the patent will be issued next Tuesday, ninth instant. Can you fix it so we will get word, say, not later than the tenth? We have always paid his royalty very prompt, and, of course, we are anxious to have it cease soon as possible." ("Exhibit 81," page 601.)

On eleventh March, 1878, the defendants wrote to Mr. Mason:

"Would like to see you and show you a model wherein we have covered up the space which Everitt claims for pillows, etc., at a cost less than twenty-five cents. If you desire, we will send the model by express to you." ("Exhibit 82," page 602.)

On fifteenth March, 1878, the defendants wrote to Mr. Mason, sending him the model referred to in their prior letter. ("Exhibit 80," page 601.)

On first April, 1878, the defendants wrote D. P. Holloway & Co., requesting them to send notices of infringement in Clark's name to A. G. Frye, of Boston, and De Graff & Taylor, of New York, alleged infringers of the Stark patent. ("Exhibit 90," page 605.)

On the eighth of April, 1878, the defendants wrote Mr. Mason, requesting that the Stark reissued patent be mailed to them. ("Exhibit No. 83," page 602.)

On the tenth of April, 1878, Mr. Mason wrote to the defendants the following remarkable letter ("Exhibit 40," page 97);

"WASHINGTON, D. C., *April* 10, 1878.

"Hale & Kilburn Manufacturing Company.

"GENTLEMEN: As the attorney of Andrew Stark, I call your attention to the reissue of his patent of August 22, 1865, which you are infringing in the manufacture of your 'Everitt bedstead.' I do so thus promptly because I believe that you will recognize the rights of my client and will not continue the infringement of his patent.

"Should you desire to continue the manufacture I will be prepared to negotiate for terms of license.

"Yours, very truly,

"R. MASON."

This letter was received by the defendants on eleventh April and was shown to the plaintiff, and was used by them as a reason
67 for refusing to pay the plaintiff his monthly instalment of royalty then due. The plaintiff declined to recognize Stark's claim, and the defendants made him a small payment on account of his royalty. On the same day the defendants replied to Mr. Mason's demand by a letter which, like Mr. Mason's, was written to be shown to the plaintiff ("Exhibit 84," p. 602), in which they say:

"Yours of the tenth instant is at hand, and in reply would respectfully ask you for a copy of Stark's patent (the reissue), that we may examine the same in reference to the infringement claimed by your client against us."

But on the same day the defendant, H. S. Hale, wrote a private letter to Mr. Mason, which was not meant for the plaintiff's eye, saying:

"We presented your letter to Mr. Everitt to-day, and per his request we write you for a copy of the reissue; you might answer stating when it will be out and that you will forward a copy next week; we will show your answer to him and that will keep him quiet until the reissue comes to hand." ("Exhibit No. 85," p. 603.)

On the twelfth of April, 1878, Mr. Mason wrote to the defendants acknowledging the receipt of their letter of eleventh instant, and saying:

"I furnish you a copy of the reissue. I find that my notice was so far premature that I shall not be able to furnish a copy until next week, as the patent is not on this week's delivery." ("Exhibit 95," page 707.)

Shortly after this the defendants appear to have received from Mr. Mason the reissue, for an undated letter of theirs was produced, in which they say:

"We received the copy of reissue this a. m., and notice that the signatures of two of our clerks are on it as witnesses. Does this not look bad to show to Everitt, as he knows both of them? Is there any way to change it? We do not suppose there is, but the mystery to us is if Everitt notices their names, which he will, what can we say to him as a reason why those names appear on the reissue? Please let us hear from you before we show it to Everitt." ("Exhibit No. 86," page 603.)

How Mr. Mason may have comforted the defendants with respect

to the apprehended discovery of their fraud upon the plaintiff is not known, for no further letter from Mr. Mason to the defendants was put in evidence.

On eighth May, 1878 (page 14), Stark receipted to the defendants for one thousand dollars, in full consideration of his assignment of patent, as per contract dated April —, 1878.

On the twenty-second of May, 1878, a meeting was held at the office of E. Coppee Mitchell, Esq., who had before that been retained as counsel for the plaintiff. There were present, the plaintiff, with Messrs. Connolly and Mitchell as his counsel, the defendants, C. Kilburn and H. S. Hale, with Mr. Otterson as their avowed and ostensible counsel, and Mr. Mason, really counsel for the defendants, but professing to represent the adverse interest of Stark, the pretended owner of the reissued patent. At that meeting Mr. C. Kilburn
68 denied that the defendants then owned the Stark patent, and Mr. Mason offered on Stark's behalf to grant a license under the Stark patent in consideration of a five per cent. royalty, which, of course, would have to be deducted from the plaintiff's seven per cent. royalty.

Mr. Otterson knew nothing of the relations between his clients, the defendants, and Mr. Mason and Mr. Stark, and the defendants purposely kept him in the dark with regard to this.

On eighth July, 1878, Mr. Mason, as counsel for Stark, filed in the circuit court of the United States for the eastern district of Pennsylvania a bill in equity entitled as of April sessions, 1878, No. 82, in which Stark was the plaintiff and the Hale & Kilburn Manufacturing Company was the defendant. The bill, which is signed by Mr. Mason, as solicitor for the plaintiff, and which has no signature or oath of the plaintiff attached to it, is apparently throughout in the handwriting of Mr. Mason. The bill avers Stark's original patent and the reissue to him; that the defendants are infringing upon Stark's patent by their public manufacture and sale of folding bedsteads; that the plaintiff has been damaged to the amount of five thousand dollars, and prays an injunction, special until hearing and perpetual thereafter, to restrain the defendants from the further manufacture of bedsteads and infringements upon the plaintiff's reissued patent, and also to account to the plaintiff therein.

There is nothing to show that Stark, the plaintiff therein, ever saw that bill or heard of that suit.

On eighth July, 1878, the defendants wrote Mr. Mason:

"Our attorney, Judge Otterson, says he won't send to circuit court of United States after the bill; that he understood you were to furnish a copy. Of course he don't know the whole story, and hence his refusal. Now hadn't you better write to the clerk to either serve it upon us in the usual way or have him send it to James Otterson, No. 705 Sansom street. You see, he thinks it is not our business to run after our own bills. We think best not to let him into the secret as yet. He understands it in this wise: that we are willing to pay seven per cent. royalty, no matter to whom we pay it *to*." ("Exhibit No. 89," page 604.)

On tenth July, 1878, Mr. Otterson, as counsel for the defendants, believing the suit to have been brought in good faith, and to be adverse to the defendants and to the interests of the plaintiff in this case, wrote to Mr. Mitchell, the plaintiff's counsel, inclosing him a copy of the Stark bill for his examination and for the examination of Mr. Everitt, and stating that he, Mr. Otterson, wanted whatever information and assistance Mr. Everitt might have at command to resist the attack.

On tenth July, 1878, the plaintiff made a formal demand upon the defendants for the accounts and the balance of royalty due to him. The defendants refused, giving as their reason that Stark had brought suit for an infringement against them. The defendants being, under the terms of their contract, more than sixty days in default, the plaintiff filed his bill in this case on twenty-fourth September, 1878.

69 On twenty-second November, 1878, Mr. Otterson deposited in the office of the court of common pleas a sealed envelope, addressed to Messrs. Bowman and Mitchell, the plaintiff's counsel, containing the plaintiff's contract with the defendants; a reassignment of the patent by the Hale & Kilburn Manufacturing Company to the plaintiff, dated sixteenth November, 1878, and a reference to the record in the Patent Office of the assignment of the plaintiff's patent by Hale, Kilburn & Co. to the Hale & Kilburn Manufacturing Company. That envelope was produced before the master on third November, 1879, opened by Mr. Otterson, and the papers therein contained put in evidence.

On twenty-seventh December, 1878, the Stark suit in the circuit court was discontinued by Mr. Mason's written order.

The fifth article of the contract between the parties stipulated that "if the said parties of the second part, or their said assignees, shall at any time fail to account for and pay over, when due, sums accruing to the said party of the first part, his heirs or assigns, under the terms of the agreement, and shall continue in said default for sixty days after demand for payment, or if they shall fail to keep the stipulation made in clause three hereof, then, and in any such case, the party or parties so in default shall forfeit all his or their interest in said letters patent, and shall reassign the same, by proper instrument in writing, to the said party of the first part, his heirs or assigns."

The bill avers in its sixth paragraph that the "said defendants have continued in default for more than sixty days in not accounting for and paying over to your orator the royalty due him under said agreement, after your orator demanded of the defendants payment of the same, whereby the rights of the said defendants to your said orator's patent, and the said improvements thereon, were forfeited, and the said defendants have not reassigned the said patent and improvements to your orator according to the terms of the said agreement," and prays for a reassignment of the letters patent.

The fourth paragraph of the answer admits "that the defendants have continued in default in this respect for more than sixty days in not paying over under the said agreement, but are in no default

for not accounting, and they agree that they have forfeited their rights to the plaintiff's said patent, and although they have not hitherto reassigned the same, they have caused and offer so to do to be made to the plaintiff, in person and through counsel, but it has not been accepted, and the defendants, the said Hale & Kilburn Manufacturing Company, under advice of counsel and in compliance with the prayer of the said bill of complaint, deposit herewith in the hands of the prothonotary of this court, at the time of filing this answer, a reassignment of the patent referred to, so that
70 the said plaintiff shall thereunder have and take all his former rights and privileges, and the said reassignment is subject to his order."

The master finds that the defendants are in default, within the terms of the fifth article of the contract, and that they continued in default for more than sixty days before the bill was filed, and he, therefore, reports that the defendants be directed to reassign to the plaintiff his letters patent.

The seventh article of the contract stipulates "that any improvements in said patented bedsteads which may be made by either of the parties hereto, and any letters patent of the United States obtained for such improvements, shall be held and enjoyed by said parties of the second part *under and subject to the terms of this agreement.*" The words italicised obviously mean that the defendants are to hold any patents for improvements with the same rights and subject to the same liabilities, upon and under which the plaintiff's patent is held by them, and, therefore, subject to the liability of assignment to the plaintiff in case of their default under the contract.

The bill avers:

"That several improvements to said patented process have been, from time to time, made by the said defendants, or some of them, which are now held by the said Hale & Kilburn Manufacturing Company, under the terms of the said agreement, which your orator, for want of knowledge, is unable to more particularly specify," and prays for an assignment of those improvements.

The answer denies "that the said improvements are on any of the features covered by the said patent of the plaintiff," and submits to the judgment of the court the question of their liability to assign them to the plaintiff.

The master finds that—

The defendants have obtained and now hold the following patents for improvements in wardrobe-bedsteads:

("Ex. A"), No. 159,908, granted sixteenth February, 1875, to H. W. Curtis.

("Ex. B"), No. 181,450, granted twenty-second August, 1876, to C. Kilburn.

("Ex. C"), No. 182,465, granted nineteenth September, 1876, to S. D. Newcomb.

All of these patents specifically refer to the plaintiff's patent, and were granted for improvements on his patent, and they have been severally assigned to the defendants.

The defendants have also obtained and hold two other patents, viz:

("Ex. 71"), letters patent No. 160,185, granted twenty-third February, 1875, to Henry S. Hale, for an "improvement in bed bottoms." The specifications of this patent show that it was intended for and usable with any bedstead, folding or otherwise.

71 ("Ex. 42.") Letters patent No. 210,777, granted tenth December, 1878, to Henry S. Hale for an "improvement in wardrobe-bedsteads." Neither this patent nor its specifications refer by name to the plaintiff's patent, but the specifications claim that the "invention consists of certain improvements in that class of bedsteads which can be converted into a representation of a wardrobe, cabinet, book-case, etc."

The master therefore finds and reports that under the seventh article of the contract the plaintiff has no claim upon letters patent No. 160,185, but that the plaintiff is entitled to demand and receive an assignment of the other letters patent above mentioned, and that the defendants, being in default under the terms of the contract, be directed to assign to the plaintiff letters patent Nos. 159,908, 181,450, 182,465, and 210,777.

The defendants, by their contract with the plaintiff, bound themselves to manufacture under his patent, by all reasonable efforts to promote the sale and introduction of his patented bedsteads, to pay him a royalty upon such of his patented bedsteads as they made and sold, and to hold under the terms of that contract any patents which they might obtain for improvements upon the plaintiff's patent.

That contract was an agreement to share gross returns, and it did not create such a community of interest in profit or loss as to make the contracting parties partners *quoad* third parties. Benjamin *vs.* Porteus, 2 H. Bl., 590; Dry *vs.* Boswell, 4 M. & S., 340; Pott *vs.* Eyton, 3 C. B., 32; Heyhoe *vs.* Burge, 9 Id., 431; nor, *a fortiori*, partners *inter se*; Gibson *vs.* Lupton, 9 Bingham, 297; French *vs.* Styring, 2 C. B., New Series, 357; Brown *vs.* Faquette, 8 Weekly Notes, 475.

Yet, from the moment of the execution of that contract, the parties occupied to each other a relation of confidence, and thenceforth it could not be permitted that either party should acquire any rights prejudicial to the other party's interest in the subject-matter of the contract.

The bill as amended states that the defendants purchased the Stark patent, avers "that the said defendants claim that the patent of your orator is an infringement upon the said Stark patent, and that as owners of the said Stark patent they can manufacture folding beds substantially in the same manner as they have been doing under their said agreement with your orator, and without paying your orator anything therefor," charges "that the relations which existed between the said defendants and himself were such that they could not, during the existence thereof, acquire title to said Stark's patent adversely to your orator, but they must be presumed to have acted for the joint interest of all interested in the manufacture of the said folding beds under said agreement," and prays an assignment to the plaintiff of Stark's patent and all rights thereunder.

72 No answer was put in to the amended bill, but the answer to the bill as originally filed was sworn to on sixteenth November, 1878, several months after the Stark patent had been bought and paid for by and assigned to the defendants. It avers that the defendants have "contracted for the control of the said Stark patent," but denies "that the same has been assigned to them," and avers that the defendants secured the control of that patent in good faith, on the advice of counsel, upon full communication of the facts to the plaintiff, and after he had refused to co-operate with the defendants.

The defendants, C. Kilburn and H. S. and J. W. Hale, testified that the plaintiff was informed of Stark's presence in Philadelphia, and of the negotiation for the purchase of this patent, and that the plaintiff was invited to participate in that purchase, but refused. The plaintiff denies that he was informed of Stark's presence in this city, or of the negotiations, or that he was asked to participate in the purchase until after tenth May, 1878, and that then thirty thousand dollars was named as Stark's price for the patent. Mr. Stevens testified that the defendant, C. Kilburn, told him not to let the plaintiff know of Stark's presence in this city.

The falsity of the defendant's answer as to the assignment of the Stark patent, the conflict between their testimony and that of the plaintiff and Mr. Stevens, the contradiction of their testimony on other points by their own letters, and their conspiracy with Mr. Mason and Mr. Stevens forbid the master to credit their testimony as to their purchase of the Stark patent in good faith, and after notice to the plaintiff. If the master were otherwise in doubt, as he is not, the admissions of the defendant, H. S. Hale, and of Mr. Mason, with regard to the want of practical value in the Stark patent in its original form, and the purpose of the defendants to buy it to reissue it, so as to cover the Everitt patent, would convince him that the defendants could not have offered the plaintiff the opportunity of participating in that purchase.

The master, therefore, finds that the defendants' negotiations with Stark were concealed from the plaintiff, that he was not offered an opportunity to participate in the purchase of the Stark patent, and that the defendants secretly purchased that patent in their own right for the purpose of using it as a means to compel the plaintiff either to abandon his patent or to so modify his contract with them as to let them manufacture under his patent for a diminished royalty. That this action of the defendants was an actual fraud upon the plaintiff is too plain for argument. The rule of equity upon this subject is perhaps best stated in the American Notes to Keech *vs.* Sanford, 1 Leading Cases in Equity, page 92, in these words: "Wherever one person is placed in such relation to another, by the act or consent of that other, or the act of a third person, or of the law, that he becomes interested for him, or interested with him, in any subject of property or business, he is prohibited from acquiring rights in that subject antagonistic to the person with whose interests he has become associated, * * * and equity vindicates this in the form of a trust."

This rule of equity and of a pure morality is applied by the courts in many different relations.

73 Thus a trustee is not permitted to hold for his own benefit the renewal of a lease belonging to the trust estate, but he is compelled to assign it to the trust and to account for its profits:—Keech *vs.* Sanford, Chancery Cases, 61; Galbraith *vs.* Elder, 8 Watts, 81; and a trustee is not permitted to buy an incumbrance upon and hold it against the trust estate:—Green *vs.* Winter, 1 Johnson's Chancery, 27.

The same rule has been applied as between husband and wife:—Swisshelm's Appeal, 6 P. F. S., 486; as between mother and children:—Weaver *vs.* Wible, 1 Casey, 270; as between devisees under the same will:—Van Horne *vs.* Fonda, 5 Johnson's Chancery Reports, 388; as between tenants in common claiming under the same deed:—Lloyd *vs.* Lynch, 4 Casey, 424; as between principals and agents:—Parkes *vs.* Alexander, 1 Johnson's Chancery Reports, 394; Rankin *vs.* Porter, 7 Watts, 387; Mowson *vs.* Thompson, Law Reports, 9 Q. B., 480; as between attorney and client:—Galbraith *vs.* Elder, 8 Watts, 81; Henry *vs.* Raiman, 1 Casey, 354; as between joint purchasers of land in moieties:—Carter *vs.* Horne, 1 Equity Abridgment, 7; as between partners:—Featherstonhaugh *vs.* Fenwick, 17 Vesey, 298; Clegg *vs.* Fishwick, 1 M. & G., 294; Bast's Appeal, 20 P. F. S., 301; as between joint owners of a ship:—Gardner *vs.* McCutcheon, 4 Beavan, 534; and as between intending partners:—Fawcett *vs.* Whitehouse, 1 R. & M., 132; Simons *vs.* The Oil Co., 11 P. F. S., 202; Short *vs.* Stevenson, 13 Id., 95; Rice's Appeal, 29 Id., 204.

As Lord Cranworth pointed out in Smith *vs.* Kay, 7 H. L., 771, equity, in dealing with cases of fraud, does not undertake to specify all the instances of the application of its equitable rules, and with regard to this very class of frauds Mr. Bispham, in his learned treatise upon equity, page 105, says, after citing many cases: "These instances must be considered only as illustrations of the principle, and not as an exhaustive catalogue of the parties to whom it will be confined."

In Duff *vs.* Wilson, 22 P. F. Smith, 442, where a cotenant had, under circumstances of actual fraud, purchased an outstanding incumbrance upon the common property, the present chief justice of Pennsylvania thus laid down the law:

"Where several persons have a joint or common interest in an estate one cannot purchase an incumbrance or an outstanding title and set it up against the rest for the purpose of depriving them of their interest. * * * Equity will, therefore, consider the purchase as *bona fide*, and intended for the benefit of all those with whom he is associated in interest. He is a trustee for them, and is entitled to be reimbursed all the purchase has cost him before he can be required to convey to them. * * * But this is on the hypothesis that he acted *bona fide*. It is only when the party has acted honestly, or, what is the same thing, in the absence of evidence of dishonesty, must be presumed to have so acted, that he has any claim to reimbursement. In case of positive fraud the rule is otherwise."

74 The circumstances of this case bring it clearly within the rule. The relation of confidence between the parties created by the contract for manufacture and sale by the defendants, under the plaintiff's patent, the defendants' covenants to promote the sale and introduction of the bedsteads made under the plaintiff's patent, and to advertise the bedsteads under the plaintiff's name, and the defendants' fraud, beginning in their suppression of the plaintiff's name in their advertisements, continuing in their false accounts, and fitly concluded by their secret purchase of a prior patent, their reissue of that patent in such shape as to cover the plaintiff's patent, and their sham suit for infringement against themselves, all combine to make a case which merits the severest condemnation which a court of equity can impose.

The master reports that the defendants be directed to assign to the plaintiff the Stark patent and all their rights thereunder.

The defendants cannot be permitted to deduct the one thousand dollars paid by them to Stark from the balance which is due by them to the plaintiff under the account. Having failed in their speculation in the purchase of the Stark patent at the plaintiff's expense they must be content to bear the loss.

The master submits herewith a form of decree drawn in accordance with the facts and findings herein reported.

CHRISTOPHER STUART PATTERSON,
Master.

Form of Decree.

And now — this cause came on to be heard at this term on bill, answers, proofs, and master's report, and upon consideration thereof it is ordered, adjudged, and decreed as follows:

First. Upon the account as stated of the defendants' sales under the plaintiff's patent and the contract of sixteenth April, 1874, the defendants are indebted to the plaintiff in the sum of $6,788.07, with interest from tenth December, 1878, the date of the entry of the interlocutory decree in this cause, and the defendants are hereby directed to forthwith pay to the plaintiff the said sum of $6,788.07, with interest as aforesaid.

Second. The defendants are hereby directed forthwith to assign and deliver to the plaintiff the letters patent for an improvement in folding bedsteads, numbered 148,940, and dated twenty-fourth March, 1874.

Third. The defendants are hereby directed forthwith to assign and deliver to the plaintiff the following letters patent, to wit: Number 159,908, granted sixteenth February, 1875, to H. W. Curtis; number 181,450, granted twenty-second August, 1876, to C. Kilburn; number 182,465, granted nineteenth September, 1876, to S. D. Newcomb, and number 210,777, granted tenth December, 1878, to Henry S. Hale.

75 Fourth. The defendants are directed hereby forthwith to assign and deliver to the plaintiff the reissued patent numbered 8161, and granted ninth April, 1878, to Andrew Stark.

Fifth. The costs of this cause are to be paid by the defendants.

Account of the bedsteads made and sold by the defendants, under the plaintiff's patent and improvements, as stated by the master.

	No.	Date.	Reference.	Purchaser.	Amount.	
		1874.				
	1	Sept. 18	S. R. 286	Hutchins & Mabbit	$150 00	Returned invoice, book D, page 207.
			Total for September, 1874		$150 00	
	2	Oct. 6	S. S 32	Haywood & Co.	$150 00	
	3	6	" 32	"	100 00	
	4	6	" 32	"	66 00	
	5	11	" 39	Lee	85 00	
	6	14	" 50	Haywood & Co.	50 00	
	7	16	" 53	Moses	110 00	
	8	19	" 61	Haywood & Co.	100 00	Charged $85.00.
	9	20	" 62	"	85 50	
				"	50 00	
	10	13	S. R 401	Lippincott	85 00	
	11	20	" 440	Onderdonk	100 00	
	12	26	F. O. K 610	Miller	40 00	
	13	29	" 618	Leach	75 00	
	14	30	" 619	Wertz	87 00	
[Page 1.]			Total for October		$1,183 00	
Return Journal E, page 117.	15	Nov. 27	C. O. L. 609	Brooks	$75 00	
	16	27	" 628	Newcomet	50 00	
	17	30	C. O. M 7	Reed	100 00	

Goods sent C. O. D., page 290; goods returned.	18	11	" ---- 50	Kurdy ----	100 00		
	19	14	" ---- 63	Bates ----	45 00		
	20	6	F. O. K. ---- 630	Haywood & Co. ----	45 00	Duplicate of No. 6.	
	21	6	" ---- 630	" ----	55 00	" " 9½.	
	22	6	" ---- 630	" ----	66 00	" " 4, page 55.	
	23	6	C. O. K. ---- 632	Duncan, M. & Co ----	100 00		
	24	20	F. O. N. ---- 22	Haywood & Co. ----	75 00		
	25	20	" ---- 22	" ----	50 00		
	26	23	" ---- 25	Anderson ----	50 00		
	27	27	" ---- 35	Mumper ----	60 00		
	28	3	S. R. ---- 488	Martin ----	70 00		
	29	7	" ---- 503	Durborrow ----	50 00		
	30	20	" ---- 546	Moore ----	75 00		
	31	24	S. S. ---- 69	Haywood & Co. ----	50 00		
	32	24	" ---- 69	" ----	60 00		
	33	21	S. R. ---- 550	Walton ----	60 00		
	34	25	" ---- 562	Bucknell ----	110 00		
	35	25	" ---- 562	Rodgers ----	100 00		
	36	30	" ---- 562	Clark ----	75 00		
[Page 2.]	39	27	S. R. ---- 552	Mrs. Sears ----	48 00		
			Total for November ----		$1,619 00		
	40	Dec. 8	City Book ----	Kampe & Co. ----	$45 00		
	41	18	" ----	Mrs. Freeman ----	75 00		
	42	21	" ----	Mrs. Hooper ----	80 00		
	43	18	S. S. ---- 132	Haywood & Co. ----	110 00		
	44	22	" ---- 141	" ----	110 00		
	45	9	S. R. ---- 607	Fries ----	75 00		
77	46	12	S. R. ---- 682	Green ----	75 00		
	47	4	C. O. M. ---- 131	Brooks, with mirror ----	160 00	Allowance ledger D, p'ge 72–25.00. Mirror ch'g'd extra.	
	48	10	" ---- 168	Markley ----	60 00		
	49	3	F. O. N. ---- 48	Haywood & Co. ----	100 00		
	50	3	" ---- 48	" ----	110 00		
	51	9	" ---- 61	" ----	100 00		
	52	9	" ---- 61	" ----	85 00	Never delivered.	

EXHIBIT "A"—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
$10	53	Dec. 23	" ------ 99	Johnson ----------	100 00	
	54	9	S. R. ---------- 607	Kilburn ----------	45 00	
			Total for December ----------		$1,330 00	

Dec. 31st, royalty on 26 Howe spring beds, allowed on springs sent charged back to plaintiff; see Exhibit No. 10, page 201; gross amount, $130; net, $99.45.

		1875.				
	55	Jan. 12	F. O. N. ------ 126	P. R. R. Co. ----------	$50 00	Return, J. E., page 29.
	56	21	" ---------- 144	H. B. & Co. ----------	70 00	
	57	25	" ---------- 151	" ----------	200 00	Duplicate of No. 80.
	58	4	C. O. M. ------ 272	Hamburger ----------	100 00	Includes mattress.
	59	18	" ------ 322	Swaim ----------	240 00	
	60	18	" ------ 322	" ----------	140 00	
	61	18	" ------ 322	" ----------	20 00	This is a window cornice.
	62	18	" ------ 322	" ----------	60 00	
	63	21	" ------ 334	Newman ----------	45 00	
[Page 3.] Spring ---------- $10	64	29	S. S. ---------- 228	P. R. R. Co. ----------	125 00	Includes box.
	65	7	S. T. ---------- 17	Hatch ----------	180 00	
	66	13	" ---------- 40	Ellis ----------	135 00	$10 above bill.
Spring ---------- $10	67	19	" ---------- 61	De Coursey, single bed --	115 00	$15 above bill, mattress & spring included.
Returned, J. E., page 29	68	22	" ---------- 69	Wm. Potts ----------	110 00	
			Total for January, 1875 ----------		$1,590 00	
Spring ---------- $10 00	69	Feb. 15	S. T. ---------- 136	W. T. & Co. ----------	$120 00	
" ---------- $10 00	70	17	S. T. ---------- 143	Hurdy, sing. bed ----------	80 00	
Returned, J. E., page 261	71	13	S. ---------- 419	Allen ----------	57 50	

8—280

		72	6	"	410	Thomas, 707 Filbert St.	30 00	This is 1 pine board ¼ inch, C. O. D., page 410, petty cash C, 92.
		73	1	S. S.	235	Haywood & Co.	110 00	
Spring	9 00	74	2	"	240	Pierce	109 00	
"	10 00	75	9	"	258	Haywood & Co.	170 00	
"	8 50	76	10	"	259	"	103 50	
"	10 50	77	11	"	263	"	160 00	
		78	15	"	272	"	165 00	
"	10 00	79	15	"	272	"	115 00	
"	20 00	80	16	"	276	"	230 00	
			Total for February, 1874				$1,450 00	
Duplicate of No. 9	4	81	Mar. 6	F. O. N.	247	Haywood & Co.	120 50	
"	9 8	82	29	"	287	"	100 00	
Spring	10 00	83	6	C. O. M.	482	Toboldt	60 00	
		84	10	"	496	Colange	75 00	
[* Page 4.]								
Spring	10 00	85	30	C. O. M.	581	Gardner	150 00	
		86	30	S. T.	210	Taylor Smith	40 00	
		87	30	"	230	Bullock	80 00	
Spring	10 00	88	19	"	249	Carr	90 00	
		89	23	"	261	Potter	40 00	
		90	9	S. S.	340	Coleman	80 00	
Sp'g	8 50	91	10	"	343	Haywood & Co.	103 50	
"	8 50	92	23	"	380	"	163 50	
"	10 00	93	24	"	383	"	160 00	
Howe sp'g	5 50	94	25	"	389	"	120 50	
"	10 00	95	25	"	389	"	75 00	
"	10 00	96	27	"	391	"	220 00	
78								
Sp'g	10 00	97	27	"	392	Moses	155 00	
"	10 00	98	30	"	407	Haywood & Co	110 00	
"	10 00	99	25	"	409	Elton	90 00	
"	10 00	100	31	"	410	Haywood & Co	260 10	
"	10 00	101	31	"	411	"	115 00	

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
		102	Mar. 31	Exhibit 10---- 202	C. M. Swaim ----------	240 00	} Duplicates of Nos. 59, 90, and 62, page 57.
		103	31	" -- 202	" --	140 00	
		104	31	" -- 202	" --	57 50	
[*Page 5.]		Total for March, 1875----------				$2,845 50	
Sp'g ----------	10	105	April 6	S. S. ---------- 428	Pearsol----------	$90 00	
" ----------	10	106	6	" -- 431	Drew ----------	65 00	
" ----------	10	107	9	" -- 440	Richardson ----------	90 00	
		108	9	" -- 441	" --	50 00	
" ----------	10	109	9	" -- 443	----------	150 00	
" ----------	8 50	110	9	" -- 450	Haywood & Co ----------	103 50	
Taken off only---	$7 50						
For mattress bill	50 00	111	17	" -- 472	Hutton ----------	42 50	Includes boxing, $4.00.
		112	21	" -- 487	N. Y. Store----------	75 00	Consigned; duplicated in N. Y. returns.
Sp'g ----------	8 50	113	22	" -- 496	Haywood & Co ----------	93 50	
		114	27	" -- 515	N. Y. Store----------	80 00	Duplicated in N. Y. returns.
" ----------	10 00	115	27	" -- 515	" --	117 00	
		116	28	" -- 518	Haywood & Co ----------	107 00	
		117	28		" --	95 00	
		118	28		"	140 00	
		119	28		" --	30 00	All springs beds.
Sp'g ----------	10 00	120	29	" -- 521	----------	105 00	
Returned ----------		121	29	" -- 527	Holmes----------	150 00	Returned J. E., page 244.
Sp'g ----------	10 00	122	29	" -- 528	Haywood & Co ----------	105 00	
" ----------	10 00	123	2	S. T -- 304	Casselberry ----------	80 00	
" ----------	10 00	124	2	" -- 306	Hertzberger----------	90 00	
		125	5	" -- 314	McNulty ----------	77 00	
Spring ----------	10 00	126	6	" -- 367	Horstmann ----------	112 00	
Side rails, 12.50; part of mattress.							

	127	17	" -- 368	Garrigues	105 00	Spring, $10 allowed; only $15 for mattress.
Sp'g 10	128	17	" -- 372	Garrett	80 50	
	129	19	" -- 374	Middleton	77 00	
[*Page 6.]						
Sp'g 9 00	130	April 24	S. T -- 400	Smithman	75 00	Allow duty, 9.00 for mattress.
	131	5	C. O. M -- 601	Cox	47 00	
Only $2.50 charged for spring	132	16	S. T -- 372	Burger	92 50	
	133	17	C. O. M -- 16	Jenks	75 00	
	134	2	F. O. N. -- 305	Taylor	55 00	
No ch'ge for sp'g	135	6	" -- 311	Ely	140 00	
	136	9	" -- 320	Haywood & Co	105 00	Duplicate of No. 171.
	137	9	" -- 320	" --	17 00	All springs.
Sp'g $10 00	138	13	" -- 329	Butterworth	90 00	
"	139	14	" -- 330	Childs	65 00	
	140	19	" -- 343	Haywood & Co	95 00	Duplicate of No. 117.
	141	26	" -- 512	N. Y. Store	105 00	Duplicated in N. Y. returns.
	142	26	" -- 512	" --	115 00	Duplicated in N. Y. returns.
[*Page 7.]			Total for April, 1875		$3,386 50	
¾ sp'g 8 50	143	May 5	S. T -- 436	Allen	$93 50	
S'ng 8 00	144	12	" -- 464	Kirk	78 00	
	145	12	" -- 464	" --	57 50	
	146	19	" -- 483	Boughton	145 00	
Sp'g not ch'ged	147	20	" -- 491	Carson	68 00	
Sp'g 10 00	148	25	" -- 509	Houghton	90 00	
" 10 00	149	1	S. S. -- 532	Robinson	65 00	Consigned; duplicated in N. Y. returns.
	150	1	" -- 533	N. Y. store	78 50	Consigned; duplicated in N. Y. returns.
	151	6	" -- 546	" --	90 00	
	152	6		" --	65 00	
79						
	153	May 6		N. Y. Store	$80 00	Duplicate in N. Y. returns.
Sp'g $10	154	6	" -- 547	Haywood & Co.	80 00	
" 10	155	15	" -- 581	Moses	65 00	
" 10	156	15	C. O. O. -- 127	Shinn	90 00	

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
		157	May 15	C. O. O. ---- 104	Ziegler	50 00	
		158	15	" ---- 128	Crowell	130 00	Duplicate of No. 146, S. G. Boughton bed, ordered for Mrs. Crowell, O. B. O., page 128; del'd to her and charged to Boughton, S. T., 488.
		159	8	Exhibit 10.---- 203	New York Store	40 00	
Sp'g	$10	160	29	" ---- 203	" ----	96 00	$16 above list price.
"	10	161	22	" ---- 203	" ----	150 00	
"	10	162	8	" ---- 203	" ----	262 00	$12 ch'ged for rocking-chairs.
2 "	20	163	8	" ---- 203	" ----	350 00	$20 ab. list price.
"	10	164	8	" ---- 203	" ----	75 00	10 "
		165	15	" ---- 203	" ----	125 00	20 "
"	10	166	22	" ---- 203	" ----	112 50	7.50 "
[*Page 8.]				Total for May, 1875 ----		$2,536 00	
		167	June 1	C. O. O.---- 195	Matchet	$50 00	
Sp'g	10	168	5	" ---- 212	Little	115 00	Duplicate of No. 414, page 70.
"	10	169	16	" ---- 225	Osbourne	50 00	
"	10	170	19	" ---- 274	Ludlam	65 00	
"	8 50	171	3	S. S.---- 624	Haywood & Co.	103 00	
"	10	172	18	" ---- 676	Ambler	68 00	$3.00 ch'ged for expense of setting bed up.
"	8 50	173	28	" ---- 699	Haywood & Co.	103 50	
"	10 00	174	8	S. T.---- 558	Kilburn	105 00	
"	10	175	18	" ---- 600	Atkinson	90 00	
		176	25	" ---- 623	McCarthy	50 00	
		177	26	" ---- 626	Buckly	210 00	Duplicate of Hutching & Mabbett, No. 178, J. E., page 157; S. B. T., 626; S. B. T., 633; O. B. O., 288.
"	10	178	29	" ---- 633	Hutchinson	210 00	

			179		26	F. O. N.	483	Haywood & Co.	103 50	Duplicate of No. 173.
"		10	180		5	Exhibit 10	203	New York Store	90 00	$10 above list price.
Sp'g		10 00	181		5	"	203	"	113 51	
			182		5	"	203	"	45 00	
"		10 00	183		28	"	204	"	90 00	ab. list price.
Returned invoice, book D, p'ge 243			184		12	S. S.	659	C. B. Stevens	65 00	
			185		12	"	668	"	150 00	
[*Page 9.]						Total for June, 1875			$1,877 01	
			186	July	21	F. O. N.	516	Jones	$140 00	Duplicates of Nos. 196 and 197.
			187		21	"	516		50 00	
			188		19	S. T.	686	Pollock	58 00	
Sp'g		10	189		22	"	695	Rodenbaugh	55 00	
"		8 50	190		19	S. S.	733	Haywood & Co.	53 50	
"		10 00	191		17	Ex. No. 10	204	New York Store	75 00	Returned. See returns Aug. 21st, Ex. No. 10, p'ge 204.
"		8 00	192		17	"	204	"	148 00	
"		10 00	193		31	"	204	"	100 00	$10 ab. list.
[*Page 10.]						Total for July, 1875			$679 50	
Never delivered			194	Aug.	21	C. O. O.	455	Conway	$113 00	
			195		27	"	472	Harlan	55 00	
Sp'g		10	196		3	S. S.	779	Jones	140 00	Returned, J. E., p'ge 361.
			197		3	"	779	"	58 50	
"		8 50	198		14	"	786	Haywood & Co.	78 50	1.00 ab. list.
"		8 00	199		28	"	810	"	78 00	
"		8 00	200		31	"	812	Mitchell, H. & Co.	53 00	
"		10 00	201		31	"	814	Jones	250 00	Never paid.
			202		11	S. T.	744	Faunce	40 00	
2 "		17 00	203		11	"	744	Allen	107 00	
"		9 00	204		16	"	755	Plaintiff	104 00	
80										
Sp'g		10 00	205	Aug.	27	S. T.	782	Slocum	100 00	
"		10 00	206		28	"	786	Wells & Hope	62 00	Only 3.00 allowed for mattress.
"		8 00	207		30	"	787	Plaintiff	103 00	

EXHIBIT A.—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
"	8 00	208	30	S. T. 787	Plaintiff	53 00	
"		209	2	F. O. N. 529	Hale	53 50	Never delivered.
		210	25	" 559	Burdlinger	90 00	
"	10 00	211	14	Exhibit 10 204	New York store	40 00	
		212	21	" 204	"	150 00	$10 ab. list.
"	10 00	213	21	" 204	"	90 00	
[* Page 11.]				Total for August, 1875		$1,818 50	
Sp'g	10 00	214	Sept. 2	F. O. N. 567	Hubbell	$65 00	
		215	6	" 572	Nilson	40 00	Duplicate of No. 235½, p'ge 64.
		216	7	" 573	Moses	55 00	
		217	17	" 590	Jones	108 00	Never delivered.
"	10 00	218	20	" 592	Pope	105 00	
		219	20	" 592	Haywood & Co.	55 00	
"	10 00	220	30	" 606	"	135 00	
"	10 00	221	2	S. T. 799	Mullen & B	210 00	
		222	3	" 802	Seely	150 00	Returned. See J. E., p'ge 244 & 220.
"	10 00	223	3	" 802	Anthony	58 50	
		224	3	" 803	Klauder	140 00	
		225	4	" 804	Seeger	85 00	$5 included for altering a mattress.
Master only charges 5.00 for spring		226	10	" 820	Cahill	100 00	
		227	10	" 821	Lippincott	14 00	
		228	11	" 823	Geiger	105 00	
		229	20	" 847	Plaintiff	58 50	$100 ab. bill price.
Sp'g	8 00	230	21	" 850	Sautelle	53 00	
		231	21	" 853	Johnson	55 00	
"	10 00	232	22	" 854	Leech	65 00	
"	10 00	233	27	" 871	Plaintiff	65 00	
"	10 00	234	27	" 871	Gregory	55 00	

		235	30	"	882	Brown	57 50	
		235½	8	S. S.	831	Nilson	40 00	Returned. J. E. p'ge 244.
"	8 50	236	10	"	839	Haywood & Co.	78 50	
"	10 00	237	10	"	839	"	105 00	
"	10 00	238	11	"	843	Jones	150 00	Never paid.
[* Page 12.]								
Sp'g	10 00	239	11	"	843	"	105 00	Never paid.
Only $3.00 for spring		240	11	"	843	"	133 00	"
Spring	10 00	241	21	"	866	Haywood & Co.	105 00	
"	10 00	242	25	"	876	Jones	65 00	Never paid.
"	5 00	243	4	C. O. O.	494	Jerman	50 00	
"	10 00	244	23	"	559	Felton	65 00	
"	9 10	245	27	"	570	Barnes	54 10	
		246	4	Exhibit 10	205	New York Store	57 50	
		247	4	"	205	"	140 00	Sp'g not charged.
"	10 00	248	4	"	205	"	110 00	$10, ab. list.
"	10 00	249	4	"	205	"	137 00	$12, "
"	10 00	250	4	"	205	"	100 00	$10, "
"	10 00	251	11	"	205	"	125 00	$10, "
		252	11	"	205	"	240 00	No ch'ge for sp'g.
"	10 00	253	11	"	205	"	100 00	$5 less than list.
2 "	20 00	254	18	"	205	"	193 50	13.50 ab. list.
"	10 00	255	18	"	205	"	160 00	$10.00 "
		256	18	"	205	"	57 50	In this case he departs from usual custom, and takes list prices & adds sp'gs.
"	10 10	257	27	"	205	"	150 00	
"	10 00	258	27	"	205	"	150 00	
"	10 00	259	30	"	206	"	175 00	Mattress, $25, charged for.
81								
		260	Sept. 30	Exhibit 10	206	New York store	65 00	
Sp'g	10	261	30	"	206	"	175 00	Mattress, ch'g'd $25.00.
		262	30	"	206	"	140 00	No sp'g ch'g'd.
"	10 00	263	30	"	206	"	80 00	
"	10 00	264	30	"	206	"	100 00	$10, ab. list.
"	10 00	265	30	"	206	"	100 00	$10 "
[* Page 13.]				Total for September, 1875			$5,340 60	

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	266	Oct. 9	C. O. O. 624	McFillen	$52 00	
	267	2	S. T. 888	Howard	40 00	
Sp'g $10 00	268	4	" 892	Plaintiff	90 00	
" 9 00	269	4	" 892	"	79 00	
	270	9	" 916	Wanamaker	70 00	$5 ab. list price.
	271	11	" 918	Garder	95 00	No ch'ge for sp'g.
	272	19	" 948	Hutchins & M.	40 00	
	273	20	" 952	Fagen	60 00	$15 ab. list.
	274	22	" 963	Everman	95 00	
Sp'g 10 00	275	22	" 964	Cram	104 25	2.25 "
" 10 00	276	23	" 971	Cragin	150 00	
" 15 00	277	25	" 953	Sandyman	80 00	2 sp'gs ch'ged for with this bed.
	278	9	Ex. No. 10	Plaintiff	85 00	Sp'g not ch'g'd.
	279	9	"	"	80 00	"
	280	20	"	Haywood & Co.	125 00	Duplicate of No. 220.
Sp'g not ch'ged	281	23	"	Plaintiff	95 00	
	282	29	Sales B'k H. 18	Hartman	67 00	$2 only ch'ged for sp'g.
	283	9	Exhibit 10 206	New York Store	240 00	Sp'g not ch'ged.
	284	9	"	"	111 00	$6 ab. list price.
	285	9	"	"	60 00	$5 "
Sp'g 10	286	9	"	"	$112 00	
" 10						
Mirror 65	287	16	"	"	180 00	1 separate sp'g ch'ged with this bed.
	288	16	"	"	40 00	
	289	16	"	"	187 00	$47 for mattress.
	290	16	"	"	241 20	$31.20 ab. list.
	291	23	"	"	100 00	$10 "
	292	23	"	"	65 00	
	293	23	"	"	100 00	$10 "
	294	30	"	"	67 50	12.50 "

[* Page 14.]

Total for October, 1875 $2,910 95

Sp'g			10	295	Nov.	1	S. C.	3	Gates & Kilburn	$90 00 Returned.
				296		20	"	44	Haywood & Co.	93 50
"			10	297		22	"	46	Merritt	140 00 Returned. J. E., 292, 12-31-76.
				298		22	"	47	Haywood & Co.	45 00
"			10	299		27	"	56	Stebbins	140 00
"			10	300		27	"	56	"	90 00
"			10	301		27	"	56	"	65 00
"			8	302		30	"	58	"	93 00
"			10 50	303		8	F. O. P.	34	Phillips	210 50
				304		18	"	52	Haywood & Co.	45 00 Duplicate of No. 298.
				305		26	"	58	Stebbins	48 00 $3.00, ab. list.
"			8 50	306		1	S. B. (W.)	30	Plaintiff	53 50
"			10 00	307		1	"	30	"	65 00
"			8 50	308		11	"	47	Jacoby	60 75
"			10 00	309		8	"	58	Plaintiff	105 00
"			10 00	310		8	"	58	"	65 00
				311		15	"	85	"	109 25
				312		16	"	90	J. W. S.	40 00 Returned, Sales B. K. B. 476.
82										
Sp'g			10 00	313	Nov.	17	S. B. (W.)	93	King	260 00 Ab. list, $10.00.
"			10 00	314		27	"	136	Roberts	105 00
"			10 00	315		19	C. O. Q.	105	Beeler	65 00
				316		20	"	109	Dobbins	58 00
"			10 00	317		26	"	129	Webster	53 00
				318		1	Exhibit 10		Allen	45 00
				319		1	"		"	45 00
[*Page 15.]										
				320		7	"		C. Kilburn	40 00
				321		6	"	207	New York Store	66 50 $9.00 ab list.
Sp'g			10 00	322		6	"	207	"	92 80 2.80 "
"			10 00	323		6	"	207	"	95 00 5.00 "
"			10 00	324		6	"	207	"	100 00 10.00 "
"			10 00	325		13	"	207	"	143 00 3.00 "
"			10 00	326		13	"	207	"	85 00 5.00 "
"			10 00	327		13	"	207	"	100 00 10.00 "
				328		13	"	207	"	47 50 7.50 "
				329		20	"	207	"	130 00
"			10 00	330		20	"	207	"	99 00 9.00 "

Exhibit A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g	$10 00	331	Nov. 20	Exhibit 10 207	New York Store	$60 00	10.00 ab. list.
"	10 00	332	20	" 207	"	125 00	20.00 "
"	10 00	333	27	" 207	"	155 00	5.00 "
"	10 00	334	27	" 207	"	122 00	7.00 "
"	10 00	335	27	" 207	"	100 00	10.00 "
		336	27.	" 207	"	70 00	15.00 "
[*Page 16.]		Total for November, 1875				$3,820 30	
Sp'g	5 00	337	Dec. 2	C. O. A. 153	Cherry	$100 00	
		338	7	" 175	Wallingford	55 00	
"	5 00	339	3	S. P 168	Kinsey	70 00	
		340	8	" 202	Carpenter	59 00	$1.50 ab. list.
"	10 00	341	8	" 202	"	93 50	
		342	14	" 224	Penna. R. R. Co.	35 00	
		343	14	" 224	"	25 00	
		344	15	" 228	Rose	60 00	2,50 ab. list.
"	10 00	345	20	" 256	Plaintiff	150 00	
"	10 00	346	20	" 256	"	66 00	
"	8 50	347	20	" 256	"	53 50	
"	10 00	348	20	" 256	"	105 00	
		349	27	" 290	Lee	95 00	
"	10 00	350	27	" 294	Plaintiff	90 00	
"	10 00	351	27	" 294	"	65 00	
"	10 00	352	27	" 294	"	48 00	
"	10 00	353	30	" 312	Herring	54 00	
"	8 50	354	30	" 313	Mrs. Riley	53 50	
"	10 00	355	31	" 318	Weil	124 00	
		356	31	F. O. P. 122	Jones	88 50	Duplicate of No. 420, page 20, Bookwalter.
"	10 00	357	10	S. C. 88	"	53 00	

"	10 00	358		10	"	88	Stebbins	48 00		
Mirror	55 00	359		14	"	99	Moses	145 00		
Spring	10 00	360		14	"	101	Seltzer	100 00		
"	10 00	361		18	"	117	Stebbins	90 00		
[*Page 17.]										
Sp'g	10 00	362		18	"	119	Levi	215 00		
Mirror	50 00									
Sp'g	10	363		21	"	124	Haywood & Co.	53 00		
		364		21	"	125	Stebbins	57 50		
"	8 50	365		21	"	125	"	53 50		
		366		31	Ex. No. 10		Frank Jay & Co.	43 00		
		367		14	"		Moses	95 00		
83										
		368	Dec.	4	Ex. No. 10	208	New York Store	103 50	$8.50 ab. list price.	
Spring	10 00	369		4	"	208	"	184 00	$44 ch'ged for mattress.	
"	10 00	370		4	"	208	"	125 00	$20.00 ab. list.	
		371		4	"	208	"	60 00	2.50 "	
"	10 00	372		4	"	208	"	170 00	20.00 "	
"	10 00	373		4	"	208	"	195 00	$45.00 for mattress.	
"	10 00	374		4	"	208	"	155 00	$15.00 ab. list.	
"	10 00	375		11	"	208	"	70 00	$5 "	
"	10 00	376		11	"	208	"	160 00	$10 only for mattress.	
"	10 00	377		11	"	208	"	95 00	$40 "	
"	$10 & 2 mirrors $75	378		25	"	208	"	190 00		
Spring	10 00	379		25	"	208	"	125 00	$30 for mattress.	
		380		25	"	208	"	47 50	7.50 ab. list.	
		381		25	"	208	"	67 50	10.00 "	
"	10 00	382		31	"	208	"	175 00	25.00 for mattress.	
"	10 00	383		14	S. C.	100	Haywood & Co.	48 00		
"	10 00	384		15	"	105	Stebbins	53 00		
[*Page 18.]					Total for December, 1875			$4,466 50		

Bedsteads returned to N. Y. store. See Exhibit 10, page 209. Per returns of Dec. 4th & 25th: 1 bed, No. 3, veneered, 95.00; 1 bed, No. 4, veneered, 105.00.

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
			1876.				
Sp'g	$10 00	385	Jan. 4	S. C. 156	Stebbins	$48 00	
"	10 00	386	4	" 156	"	53 00	
"	10 00	387	22	F. O. P. 149	Haywood & Co.	130 00	$15 ab. list.
		388	6	S. B. 335	Jackson	53 00	
"	10 00	389	10	" 361	Plaintiff	80 00	
		390	10	" 361	"	90 00	
		391	17	" 397	"	41 00	Returned Mar. 13th, sales b'k 758.
		392	17	" 397	"	55 00	
		393	20	" 420	Lynde	98 50	Credited pl'ff on basis, $105.
"	8 50	394	24	" 439	Plaintiff	78 50	
"	10 00	395	25	" 448	Reed	$100 00	
"	8 50	396	25	" 448	Lewis	46 50	$5 ab. list.
"	5 00	397	29	" 476	J. W. Sheppard	70 00	
		398	8	C. O. Q. 345	Hoburn	29 00	
"	8 50	399	15	" 379	Lingg	63 50	$10 for mattress.
		400	18	" 381	Bruder	38 00	
		401	13	Exhibit 10	McGurney & Ryan	38 00	
		402	19	"	Van Namee	33 00	
		403	22	"	New York Store	55 00	Not in N. Y. returns at all.
		404	8	" 209	"	62 50	$5 ab. list.
		405	8	" 209	"	40 00	
		406	8	" 209	"	155 00	Sp'g not ch'ged.
		407	8	" 209	"	100 00	Mattress "
2 sp'g	20 00	408	22	" 209	"	126 00	$20 ab. list.
		409	22	" 209	"	95 00	
Sp'g	10 00	410	22	" 209	"	75 00	$10 "
"	10 00	411	22	" 209	"	100 00	$10 "

[*Page 19.]

Total for January, 1876 ..... $1,953 50

Sp'g	8 00	412	Feb. 24	C. O. Q.	537	Salter	$55 00	
		413	24	S. B.	539	Headly	40 00	$5 ab. list.
"	10 00	414	12	"	556	Little	85 00	
"	6 50	415	14	"	562	Plaintiff	156 50	
Duplicate of No. 431		416	9	F. O. P.	175	Wiser	52 00	Sent on order of N. Y. store ch'ged to them, S. B. C. 245, included in N.Y. returns Feb'y 2. Duplicated.
Duplicate of No. 429		417	9	"	175	"	193 00	
		418	9	"	226	Bookwalter	218 50	
Spring	$10 00	419	9	"	226	"	10 00	
		420	9	"	226	"	10 00	Marble slab.
"	8 50	421	9	"	226	"	88 50	
84								
Spring	$8 00	422	17	S. C.	251	Lamotte	83 00	
		423	3	O. R.	30	D. York	83 00	
		424	3	"	31	Kenyon	38 00	
		425	8	"	39	Hogg	35 00	Duplicates of No. 413, page 70.
		426	9	"	42		40 00	
		427	9	Exhibit 10		Hobson	35 00	
"	10 00	428	5	"	210	New York Store	75 00	
"	10 00	429	12	"	210	"	200 00	$5. ab. list price.
"	10 00	430	12	"	210	"	100 00	15. "
		431	12	"	210	"	50 00	
		432	12	"	210	"	35 00	
"	10 00	433	12	"	210	"	70 00	13. "
"	10 00	434	12	"	210	"	100 00	25. "
Only $2.50 allowed for mattress		435	26	"	210	"	57 50	22.00 "
Sp'g	10 00	436	26	"	210	"	125 00	25.00 "
"	5 00	437	26	"	210	"	125 00	
[* Page 20.]		Total for February, 1876					$2,160 00	
Spring	8 00	438	Mar. 6	S. C.	295	Hargraves	$108 00	
"	10 00							
$13 ch'ged for repairing mattress & setting up.		439	23	"	343	Mann	75 00	Returned, 6, 30, '76. I. E. 453.

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	440	Mar. 14	F. O. P. 225	Kinkard	$52 00	Charged to N. Y. store & included in their return.
	441	2	S. B. 678	Porter	47 00	
	442	6	" 705	Shoemaker	45 00	$2.00 below list.
In these beds sold plaintiff there were no springs, a good point against their theory of incompleteness without these springs.	443	6	" 707	Plaintiff	80 00	
	444	6	" 707	"	65 00	
	445	6	" 707	"	42 00	
	446	6	" 711	Scroggy	33 00	
	447	6	" 747	Uhler	43 00	
	448	11	" 748	Evans	60 00	
	449	11	" 753	Frank	80 00	
Spring 8 00	450	11	" 754	Keen	88 00	
" 10 00	451	13	" 757	Johnson	57 00	
No springs sold plaintiff.	452	13	" 758	Plaintiff	120 00	
	453	13	" 758	"	42 50	50c. not on bill.
Sp'g 8 50	454	14	" 767	Karcher	68 50	
" 10 00	455	17	" 784	Stricker	65 00	
	456	17	" 787	Leopold	130 00	
	457	17	" 787	Stewart	65 00	
	458	17	" 792	Fisher	77 00	
	459	21	" 807	Plaintiff	5 67	
2 sp'gs ch'ged on this bedstead	460	22	" 808	Neal	69 00	
	461	23	" 822	Drumheller	47 00	
[*Page 21.]						
	462	23	" 823	Blair	42 00	
No sp'g sold pl'ff	463	27	" 842	Plaintiff	80 00	
Sp'g 8 00	464	27	" 842	"	55 00	
" 9 00	465	29	" 862	Escober	93 00	$4 for box charged.

"	5 00	466	14	O. R.	109	Sloanaker	47 00	} $4.00 for matress charged.	
Date of order, April, 21st.		467	21	"	190	Kelly	47 00		
Duplicate of No. 454, ordered for Thomas and billed to Karcher		468	14	C. O. Q.	607	Thomas	78 50		
Duplicate of No. 458		469	13	O. R.	106	Carmany	65 00	Not the am't on order b'k.	
		470	25	Exhibit 10		D. K. Patterson	57 00		
		471	25	"	210	C. Kilburn	50 00		
Spring	9 60	472	4	"	210	New York Store	70 00	Only $6 for mattress.	
"	10 00	473	4	"	210	"	110 00	$10. ab. list.	
"	10 00	474	11	"	211	"	100 00	10. "	
"	10 00	475	11	"	211	"	115 00	25. "	
"	10 00	476	11	"	211	"	110 00	10. "	
"	10 00	477	11	"	211	"	145 00	15. "	
"	9 00	478	11	"	211	"	65 00	4. for mattress.	
"	9 00	479	11	"	211	"	65 00	4. "	
		480	11	"	211	"	62 00	12.50 ab. list.	
		481	18	"	211	"	42 50		
"	10 00	482	18	"	211	"	80 00	10.00 "	
"	10 00	483	18	"	211	"	100 00	10.00 "	
85									
Sp'g	5 00	484	Mar. 18	Exhibit 10	211	New York Store	$95 00		
"	10 00	485	25	"	211	"	120 00	$10 ab. list price.	
[*Page 22.]									
Sp'g	20 00	486	25	"	211	"	205 00	$25 "	
"	10 00	487	25	"		"	65 00	$13 "	
"	10 00	488	31	"		"	105 00	$10 "	
		489	31	"		"	46 00	$4 "	
"	10 00	490	31	"		"	100 00	$15 "	
"	10 00	491	31	"		"	100 00	$20 "	
"	10 00	492	31	"		"	135 00	$5 "	
"	9 00	493	31	"		"	50 00	$8 "	
[*Page 23.]			Total for March, 1876				$4,265 67		

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g	$10 00	494	Apr. 1	S. B. 82	Beagary	$210 00	
"	8 00	495	5	" 899	Lambrite	128 00	
"	5 00	496	7	" 912	Jacob	44 00	
Howe sp'g	3 00	497	8	" 919	Fulton	32 00	
Sp'g	8 00	498	12	" 928	Plaintiff	55 00	
Only 2.00 for sp'g		499	13	" 950	Scofield	122 00	
No sp'gs for these seven beds		500	19	S. C., 1 9	Plaintiff	329 00	
		501	19	" 9	"	8 00	Spring sold separately; probably for an ordinary bed.
		502	24	" 25	Long	65 00	
		503	24	" 25	"	12 00	Spring separately.
Sp'g	8 00	504	26	" 30	Rose	73 50	
		505	18	S. C., 2 5	Brayman	120 00	
Howe sp'g	5 00	506	27	" 35	Burr Aiken	42 00	
"	3 00	507	27	" 38	Shuman	45 00	
		508	29	" 49	Bosler	52 00	
2 sp'gs	20 00	509	29	" 51	Garden	102 00	$6 for box & freight.
1 "	10 00	510	29	" 51	Hallowell	100 00	
1 "	10 00	511	1	F. O. P. 260	Schaum	90 00	
1 "	8 50	512	12	" 278	Haley	53 50	$3.50 ab. list.
Spring	8 00	513	21	S. C. 420	Stebbins	98 00	
		514	5	O. R. 166	Chandler	65 00	
"	5 50	515	17	" 179	Morgan	47 50	
		516	26	" 200	Davis	40 00	
		517	28	" 206	Richardson	85 00	
[*Page 24.]		518	5	Exhibit 10	McConnell	37 00	
		519	18	"	Hayes	42 00	
Duplicate of No. 467		520	21	" 212	Kelly	47 00	
Spring	10 00	521	6	" 212	New York Store	187 50	$17.50 ab. list.
Spring, $10; 1 bed & sp'g ret'd. See returns April 8		522	6	" 212	"	230 00	$5.00 "

Spring	10 00	523	6	"	212	"		70 00	13.00	"
		524	6	"	212	"		80 00		
Spring	9 00	525	6	"	212	"		100 00	6.00	"
"	9 00	526	15	"	212	"		90 00	21.00	"
"	8 25	527	15	"	212	"		128 25		
"	10 00	528	15	"	212	"		110 00	$10 ch'ged for 4 oak chairs.	
"	10 00	529	22	"	212	"		115 00	$15 ab. list.	
"	10 00	530	22	"	212	"		125 00	$25	"
"	10 00	531	22	"	212	"		81 00	$14	"
		532	22	"	212	"		52 50	$10	"
"	9 00	533	22	"	212	"		80 00	$11	"
"	9 00	534	22	"	212	"		65 00	$14	"
"	10 00	535	22	"	212	"		150 00	$20	"
"	10 00	536	22	"	212	"		95 00	$20	"
"	10 00	537	22	"	212	"		90 00		
"	10 00	538	22	"	212	"		115 00	$5	"
		539	22	"	212	"		50 00	$12	"
"	10 00	540	29	"	212	"		125 00	25	"
"	9 00	541	29	"	212	"		93 43	2.43	"
"	9 00	542	29	"	212	"		75 00	14.00	"
[*Page 25.]					212					
86										
Sp'g	8 00	543	29	Exhibit 10	212	New York Store		128 00		
"	10 00	544	29	"	212	"		175 00	$5 ab. list price.	
"	10 00	545	29	"	212	"		175 00	5	"
"	10 00	546	29	"	212	"		115 00	30	"
"	9 00	547	29	"	212	"		55 00	13	"
"	10 00	548	29	"	212	"		90 00		
[*Page 26.]		Total for April, 1876						$5,192 18		
Sp'g	8 50	549	May 31	F. O. P.	359	Robinson		$50 50		
		550	31	"	360	Cowperthwaite		135 00	Never delivered.	
		551	11	S. C., 2	91	Elcock		42 50		
"	8 80	552	17	"	106	Gustine		46 80		
		553	19	"	111	Child		5 00		

Exhibit A—Continued.

		No	Date.	Reference.		Purchaser.	Amount.	
		554	May 24	S. C., 2	128	Crow	78 00	
Sp'g	10 00	555	3	S. C., 1	62	West	70 00	3.00 ab. list.
		556	5	"	71	Armstrong	47 00	
No spring sold		557	8	"	73	Plaintiff	90 00	
Sp'g	8 00	558	8	"	73	"	65 00	
"	10 00	559	8	"	76	Volkmar	135 00	$5 ab. list.
		560	8	"	76	Gladwin	47 00	
		561	11	"	78	Kemble	38 00	
Sp'g	10 00	562	11	"	79	Mitchell	50 00	Returned 7, 31, '76, J. E., page 476.
Howe sp'g	6 00	563	11	"	79	Simmons	63 00	
Sp'g	5 50	564	11	"	84	Medina	38 50	
"	19 00	565	13	"	98	Partridge	67 00	
"	10 00	566	18	"	112	Kibby	135 00	$5 ab. list.
		567	20	"	124	Fry	57 00	
"	3 50	568	1	O. R.	211	Bloom	50 50	
		569	14	"	218	Samuel, May	47 00	
"	10 00	570	11	"	235	Sutton	100 00	
Howe sp'g	5 00	571	12	"	240	Muff	52 00	
Sp'g	8 50	572	22	"	257	Tippen	68 50	
[*Page 27.]								
		573	15	Exhibit 10		Nelson	50 00	
Spring	$10 00	574	20	"	213	New York Store	162 00	$22. ab. list.
Mirror	50 00							
Sp'g	10 00	575	26	"	213	"	155 00	5. "
Mirror	50 00							
Sp'g	10 00	576	27	"	213	"	170 00	40. "
Sp'g	10 00	577	6	"	213	"	110 00	10. "
"	10 00	578	6	"	213	"	125 00	25. "
"	10 00	579	6	"	213	"	75 00	18. "
No charge for spring		580	6	"	213	"	100 00	
Spring	9 00	581	6	"	213	"	72 68	21.68 "
"	10 00	582	6	"	213	"	95 00	

"	10 00	583	6	"	213	"		92 00	17.00	"
"	9 00	584	6	"	213	"		60 00	9.00	"
"	5 00	585	6	"	213	"		40 00		
"	10 00	586	13	"	213	"		85 00	18.00	"
"	10 00	587	13	"	213	"		55 00	3.00	"
"	9 00	588	13	"	213	"		90 00	6.00	"
"	10 00	589	13	"	213	"		110 00		
"	10 00	590	13	"	213	"		60 00	3.00	"
"	10 00	591	13	"	213	"		100 00	25.00	"
"	5 00	592	13	"	213	"		90 00	5.00	"
"	10 00	593	13	"	213	"		90 00		
"	10 00	594	13	"	213	"		106 00	6.00	"
		595	20	"	213	"		85 00		
"	10 00	596	20	"	213	"		75 00	13.00	"
[*Page 28.]										
Spring	10 00	597	27	"	213	"		145 00	35.00	"
"	5 00	598	27	"	213	"		90 00		
No ch'ge for sp'g		599	27	"	213	"		100 00		
Sp'g	10 00	600	27	"	213	"		155 00	25.00	"
"	10 00	601	27	"	213	"		65 00	8.00	"
"	10 00	602	27	"	213	"		80 00	13.00	"
		603	27	"	213	"		57 00		
[*Page 29.]		Total for May, 1876						$4,522 98		

87

Spring	$10 00	784	Sept. 18	Exhibit 10	217	New York Store	$185 00	$10 ab. list.	
"	10 00	785	18	"	217	"	130 00	$30	"
"	10 00	786	18	"	217	"	250 00	$40	"
[*Page 37.]									
Spring	10 00	787	18	"	218	"	115 00	$15	"
"	10 00	788	23	"	219	"	75 00	5	"
		789	26	"	219	Walker	43 00	Duplicate of No. 748	
		790	27	"	219	Saylor	55 00	Duplicate of No. 755	
		791	24	"	219	New York Store	90 00		
		792	24	"	219	"	35 00		
"	10 00	793	24	"	219	"	120 00		

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Spring ..... 9 00 Overcharge $100 00	794	Sept. 24	Exhibit 10 219	New York Store	179 00	This am't not in the N. Y. returns at all.
Sp'g 9 00	795	24	" 219	"	70 00	$16.00 ab. list.
" 9 00	796	24	" 219	"	95 00	16.00 "
" 10 00	797	24	" 219	"	85 00	25.00 "
" 10 00	798	24	" 219	"	121 00	21.00 "
" 10 00	799	24	" 219	"	90 00	
" 10 00	800	7	S. C. 643	Phillips	230 00	
[* Page 38.]	Total for September, 1876				$8,094 50	
	801	Oct. 2	O. R. 401	Shoemaker	$44 50	$2.00 ab. list
Sp'g 10 00	802	3	" 403	Bartol	74 00	6.00 for altering mattress.
" 9 00	803	4	" 404	Hartman	54 00	
" 9 00	804	4	" 404	Kock	94 00	
" 10 00	805	5	" 406	Davis	100 00	
" 10 00	806	6	F. O. P. 494	Oshawa Co.	100 00	
" ..... 9 00 Washstand $25 00	807	6	" 496	Brackenridge	185 00	$41 ab. list.
Washstand ..... $34 00 Sp'g 9 00	808	6	" 497	Beumer	183 00	$40 "
Sp'g 9 00	809	6	" 501	Haywood & Co.	270 00	Spring $20.
" ..... 9 00 Washstand 35	810	6	" 501	Countess Heberstein	175 00	$26 ab. list.
	811	6	" 501	"	100 00	
	812	9	" 506	Wilkinson	50 00	5.00, above list.
Spring $10 00	813	9	" 506	Stevenson	105 00	5.00 for box.
" 10 00	814	9	" 507	Stebbins	70 00	
" 10 00	815	10	" 508	Hayes	135 00	5.00 for box.

								35 00	
"	10 00	816	Oct.	10	"	510	Merchant	120 00	
Mirror	$60 00	817		13	S. A.	4	Spencer	185 00	
		818		20	"	16	Saigo	70 00	
No sp'g ch'g'd		819		21	"	20	Davis	43 00	5.00 for box.
Spring	$10 00	820		24	"	26	Parrish	135 00	
		821		26	"	33	McGaw	70 00	
"	10 00	822		28	"	42	"	135 00	
"	10 00	823		28	"	46	McCune	85 00	
		824		12	O. B.	3	Baker	55 00	
[* Page 39.]		825		20	S. A., 1	22	Burns		
		826		23	"	22	Graham	35 00	
		827		23	"	26	Rhodes	55 00	
Spring	10 00	828		17	S. A., 2	11	Test	70 00	
"	9 00	829		19	"	18	Spangler	89 00	
"	9 00	830		19	"	19	Brown	80 00	16.00 included for bureau & towel rack.
		831		31	"	28	Riley	64 00	
No sp'g ch'g'd		832		31	"	40	Read	38 00	
		833		12	C. O. B.	5	Husband	33 00	
"		834		20	"	12	Young	88 00	
Never delivered		835		26	"	19	Bailey	116 00	No such am't on order book.
		836		12	F. O. C.	1	Brown	55 00	
Spring	10 00	837		12	"	7	McGaw	185 00	$40 ab. list.
Washstand	35 00								
Sp'g	10 00	838		9	"	13	Banfield	60 00	
"	10 00	839		23	"	18	Patten	135 00	
		840		24	"	21	McElroy	65 00	
"	10 00	841		25	"	21	Mitchell	191 50	$16.50 ab. list.
"	20 00	842		25	"	22	Heldrick	200 00	
"	4 00	843		25	"	22	Tisdell	47 00	
"	10 00	844		27	"	25	Peters	190 00	$65 ab. list.
88									
Spring	$10 00	721	Sept.	18	C. O. R. P.	386	Supplee	$90 00	$5 above list.
"	8 50	722		19	"	387	Hirstman	88 50	
"	10 00	723		19	"	387	Leonard	60 00	
"	10 00	724		20	"	388	Hooker	60 00	

EXHIBIT "A"—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
Spring	$10 00	725	Sept. 20	C. O. R. P 388	Cragin	$135 00	
"	10 00	726	21	" 389	Barnes	70 00	$10 ab. list.
"	8 50	727	22	" 391	Bean	46 50	
		728	25	" 394	Robinson		Duplicate of No. 883.
"	10 00	729	30	" 399	Stevenson	60 00	5.00 ab. list.
"	10 00	730	30	" 399	Stokes	35 00	
"	8 50	731	30	F. O. R. P. 461	Shreeve	46 50	
"	10 00	732	6	" 463	Lamb	110 00	
"	10 00	733	9	" 464	Wilson	115 00	$5 per box.
"	8 50	734	13	" 469	Check	78 50	
"	10 00	735	14	" 469	Check	150 00	$10 ab. list.
Mirror	50 00						
Box	5 00	736	14	" 470	Brown	150 00	
Sp'g	10 00						
		737	14	" 470	Chisholm	37 00	$2 ab. list.
No " charged		738	14	" 472	Miller	75 00	
		739	14	" 472	Kohn	35 00	
[*Page 35.]							
Howe sp'g	$4 00	740	14	" 474	Kirchbaum	34 00	
"	10 00	741	20	" 477	Herndon	120 00	
"	9 00	742	20	" 478	Hill & K	89 00	
		743	21	" 479	Hale	110 00	$10 ab. list.
		744	21	" 480	Bancroft	42 50	
"	10 00	745	22	" 483	Frick	60 00	
		746	22	" 483	Werborn	40 00	Duplicate of No. 868, ch'g'd to N. Y. Store, & in their return of Oct. 27th.
		747	26	" 485	$7.58 b. list	50 00	
"	10 00	748	26	" 485	Walker	53 00	
"	10 00	749	27	" 486	Bancroft	210 00	
"	10 00	750	27	" 486	"	100 00	
"	8 00	751	27	" 486	"	83 00	

* "	10 00	752	27	" 486	Cross	60 00	
Spring.		753	29	F. O. P. 488	Hastings	35 00	
"	10 00	754	29	" 490	Farwell	104 00	$10.00 ab. list.
" not ch'g'd		755	29	" 490	Saylor	56 00	1 00 ab. list.
		756	30	" 494	Kauffman	80 00	
		757	1	S. C. 639	Hartzler	42 50	
"	10 00	758	13	" 656	Louis M. & Co.	60 00	
"	10 00	759	22	" 670	Haywood & Co	140 00	$5.00 per box.
"	10 00	760	22	" 670	"	138 50	$5 "
"	9 00	761	26	" 680	Weller	47 00	
		762	26	" 680	"	43 50	1.00 ab. list.
[*Page 36.]		763	29	" 680	Hawkins	57 00	7.00 "
"	10 00		4	Exhibit 10 217	New York Store	65 00	5.00 "
"	10 00	764	4	" 217	"	125 00	25.00 "
"	10 00	765	4	" 217	"	115 00	15.00 "
"	9 00	766	4	" 217	"	100 00	6.00 "
"	10 00	767	4	" 217	"	175 00	
"	10 00	768	4	" 217	"	125 00	25.00 "
"	10 00	769	4	" 217	"	160 00	25.00 "
"	9 00	770	4	" 217	"	100 00	11.00 "
"	10 00	771	4	" 217	"	90 00	5.00 "
"	10 00	772	4	" 217	"	65 00	12.00 "
"	10 00	773	4	" 217	"	105 00	20.00 "
		774	11	" 218	Gilbert	35 00	
"	10 00	775	11	" 218	New York Store	115 00	15.00 "
"	9 00	776	11	" 218	"	89 00	10.00 "
"	10 00	777	11	" 218	"	112 50	12.50 "
"	10 00						
Mirror.	35 00	778	11	" 218	"	135 00	
Sp'g	10 00	779	11	" 218	"	122 00	22.00 "
"	10 00	780	18	" 218	"	71 00	11.00 "
		781	18	" 218	"	42 50	
"	10 00	782	18	" 218	"	125 00	25.00 "
		783	18	" 218	"	42 50	7.50 "

* In this case a No. 6 bedstead was used, and closets and other extra work added to it, according to the designs and drawings furnished by the customers, but the master adds everything in as liable for royalty.

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
89							
Sp'g	8 50	664	July 21	F. O. P. 419	Woodhull	$88 50	
		665	26	" 422	Lovell	75 00	
Mirror $40, sp'g.	10 00	666	1	S. C. 574	Haywood & Co.	140 00	
Sp'g	10 00	667	31	" 607	Wright	100 00	
		668	8	Exhibit 10	Walker	50 00	
"	10 00	669	8	" 216	New York Store	110 00	$25 ab. list.
"	9 00	670	8	" 216	"	60 00	$6 "
Mirror	40 00	671	8	" 216	"	130 00	
		672	8	" 216	"	130 00	Never delivered. See return, Aug. 12, 1876.
Sp'g	10 00	673	8	" 216	"	155 00	$20.00 ab. list.
"	10 00	674	22	" 216	"	62 50	2.50 "
"	9 00	675	29	" 216	"	105 00	11.00 "
[* Page 32.]		Total for July, 1876				$2,687 50	
Sp'g	10 00	676	Aug. 2	C. O. R. & P. 343	Buckley	$85 00	
Howe, sp'g	4 50	677	2	" 345	Wilkins	42 50	
Mirror $40, sp'g.	10 00	678	2	" 354	Hovey	110 00	$25 not on order book at all.
		679	19	" 359	Irvin	140 00	
		680	25	" 365	Sessions	70 00	
Sp'g	10 00	681	28	" 366	Mason	73 00	$2.00 below list.
		682	30	" 369	Theobold	48 00	
		683	30	" 369	Blaisdell	200 00	Returned as per memorandum on order book.
"	10 00	684	1	F. O. P. 428	Hunter	110 00	
		685	1	" 428	"	56 00	$6.00 ab. list.
		686	1	" 433	Willis	52 00	$2.00 "
		687	9	" 435	Hammond	55 00	

			688	11	"	436	Tripp & A.	35 00	
"		8 50	689	22	"	443	Platter	63 00	
"		10 00	690	25	"	448	Gonzalez	55 00	2.00 ab. list.
"		8 50	691	26	"	449	Watts	53 50	
"		10 00	692	30	"	452	Wilson	135 00	
"		8 50	693	30	"	452	"	88 50	
"		10 00	694	30	"	452	Bancroft & Boyden	140 00	$5 for box.
"		10 00	695	30	"	452	"	100 00	
"		10 00	696	30	"	452	"	70 00	
"		10 00	697	30	"	452	"	53 00	
"	$9, washstand	35 00	698	30	"	452	"	159 00	$25 ab. list.
Sp'g		10 00	699	30	"	454	Roberts	60 00	
[* Page 33.]									
			700	31	"	455	Estes	70 25	
Sp'g		10 00	701	1	S. C.	610	Haywood & Co.	140 00	Box, $5.00.
"	10, box	5 00	702	10	"	617	W. East & Son	225 00	$10 00 ab. list.
			703	12	Exhibit 10	216	New York Store	45 50	3 "
			704	5	"	216	"	50 00	7.50 "
"		10 00	705	12	"	217	"	85 00	5.00 "
"		10 00	706	12	"	217	"	100 00	20.00 "
"		10 00	707	12	"	217	"	75 00	5.00 below list.
"		10 00	708	19	"	217	"	189 00	14.00 above list.
Mattress		7 50	709	26	"	217	"	125 00	
Spring		10 00	710	26	"	217	"	100 00	15.00 "
"		10 00	711	26	"	217	"	100 00	15.00 "
"	10 00, Mirror	$40	712	16	"	217	McDowell	162 00	22.00 "
"		10 00	713	31	"	217	New York Store	136 50	1.50 "
"		10 00	714	31	"	217	"	90 43	5.43 "
"		10 00	715	31	"	217	"	63 00	

[* Page 34.] Amount for August, 1876 ..... $3,810 68

			716	Sept. 8	C. O. S.	415	Kamerer	$35 00	
Sp'g		10 00	717	8	"	421	Swan & Clark	182 50	47.50 ab. list.
"		10 00	718	8	C. O. R. P.	375	Collins	100 00	
"		10 00	719	9	"	378	Woodberry	131 00	$11.00 "
"		9 00	720	15	"	384	Hancock	98 00	$4.00.

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
90							
Spring	10 00	604	June 5	O. R. P. 278	Kollock	$58 00	$6. ab. list.
"	10 00	605	5	" 278	Warren	60 00	
"	10 00	606	5	" 280	Merino	63 00	1.50 "
"	9 00	607	8	" 283	Ayres	54 00	
"	4 50	608	8	" 285	N. H. S. b'ld'g	49 50	
"	10 00	609	15	" 293	Coon	135 00	
"	10 00	610	23	" 303	Carson	60 00	5.00 "
"	9 00	611	24	" 305	Bower	79 00	
		612	14	O. S., city 273	Karcher	45 00	
		613	14	" 273	"	75 00	
"	30 00	614	23	" 295	Gray	180 00	
"	10 00	615	5	F. O. P. 368	Walker	135 00	
		616	6	" 368	McCullough	40 00	
"	10 00	617	5	" 39	Young, S. C. 545	147 00	$12 ch'g'd for box and putting up.
"	10 00	618	9	" 375	Mallon	180 00	$5.00 box ch'g'd.
Mirror	40 00						
		619	20	" 389	North	45 00	2.50 "
		620	20	" 389	Mallon	53 00	3.00 "
		621	21	" 391	Abbott	38 00	3.00 above list.
Returned J. A. 54		622	22	" 393	Riddle	280 00	
Spring	10 00	623	26	" 395	Dorrance	117 00	7.00 "
"	9 00	624	26	" 396	Mayer	164 00	4.00 for box.
Mirror	25 00						
		625	29	" 398	Wilcox	55 00	13.00 ab. list.
		626	1	S. C. 517	Valentine	55 00	
		627	2	" 518	Haywood & Co.	105 00	
[*Page 30.]							
Spring	9 00	628	6	" 526	Locke	98 00	4.00 "
		629	7	" 527	Stebbins	52 00	2.00 "
		630	15	" 544	"	95 00	5.00 for box.
"	10 00	631	15	" 545	Haywood & Co.	53 00	

"	----	5 00	632	13	S. C., 1	180	Plaintiff		80 00	
			633	13	"	180	"		65 00	
			634	30	Exhibit 10		Davis		40 00	Duplicate of No. 516.
5 bedsteads charged & delivered to plaintiff are omitted from the master's report entirely, June 5th, 1876. Sales B. K. C. 1, page 169.										
Sp'g		10 00	635	3	Exhibit 10	215	New York Store		70 00	$10.00 ab. list.
"	----	10 00	636	3	"	215	"		90 00	10.00 "
"	----	10 00	637	3	"	215	"		115 00	15.00 "
"	----	9 00	638	10	"	215	"		70 00	16.00 "
"	----	10 00	639	17	"	215	"		120 00	35.00 "
"	----	10 00	640	24	"	215	"		105 00	5.00 "
"	----	10 00	} 641	24	"	215	"		145 00	5.00 "
Mirror		40 00								
No spring ch'g'd for			642	30	"	215	"		200 00	
"	"	----	643	30	"	215	"		90 00	
"	"	----	644	30	"	215	"		125 00	
"	"	----	645	30	"	215	"		38 00	
"	"	----	646	30	"	215	"		90 00	
Spring		10 00	647	8	S. C.	529	Haywood & Co.		102 00	
[*Page 31.]			Total for June, 1876						$4,146 00	
Spring		9 00	648	July 7	C. O. R. P.	319	Kern		63 00	9.50 "
			649	7	"	319	Dickson		33 00	
Howe spring	----	4 00	650	11	"	323	Callahan		42 00	
"	----	8 00	651	13	"	325	Evans		63 00	Returned Sept. 20, J. E., page 508.
"	----	9 00	652	13	"	325	Young		53 00	
"	----	9 00	653	13	"	326	Maher		54 00	Returned 11, 30, 76. J. A. page 28.
Mirror		25 00	} 654	14	"	327	Netto		159 00	
Sp'gs		20 00	655	17	"	330	Penn. R. R.		170 00	
"	----	10 00	656	19	"	331	Rogers		110 00	
"	----	10 00	657	5	F. O. P.	401	Smith		120 00	$20.00 ab. list.
"	----	9 00	658	5	"	401	"		159 00	
"	----	10 00	659	5	"	401	"		157 00	22.00 "
			660	5	"	401	"		55 00	
"	----	9 00	} 661	7	"	405	Hill		100 00	6.00 "
Box		5 00								
Sp'g		10 00	662	9	"	408	Poppleton		100 00	

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	663	10	F. O. P. ---- 409	Poppleton - - ----------	42 50	
91						
Spring $9, washstand $35	845	Oct. 30	F. O. C. ---- 32	Hewitt ----------	175 00	$16.00 ab. list.
	846	31	" ---- 33	Schwearinger ----	65 00	
Spring ---------- 9 00	847	2	Exhibit 10 ---- 220	New York Store ---	65 00	$10.00 "
	848	2	" ----	" ----	80 00	10.00 "
" -- 10 00	849	2	" ----	" ----	155 00	15.00 "
[*Page 40.]						
Spring ------ -- 10 00	850	2	" 220	" ----	170 00	
" -- 10 00	851	2	" 220	" ----	115 00	825 ab. list.
" -- 10 00	852	2	" 220	" ----	55 00	
" -- 10 00	853	2	" 220	" ----	195 00	Duplicate of No. 708, page 80.
" 10.00, mirror, $40 00	854	2	" 220	" ----	165 00	25.00 ab. list.
Sp'g ---------- 10 00	855	2	" 220	" ----	90 00	40.00 "
" -- 10 00	856	2	" 220	" ----	155 00	20.00 "
" -- 10 00	857	2	" 220	" ----	155 00	20.00 "
No spring charged ------	858	4	" 220	Rozee ----------	45 00	
	859	10	" 221	Collein ----------	90 00	Duplicate of No. 718, page 80.
Sp'g ---------- 10 00	860	9	" 221	New York Store ---	100 00	
" -- 10 00	861	9	" 221	" ----	140 00	$20.00 ab. list.
" -- 10 00	862	9	" 221	" ----	165 00	30.00 "
" -- 10 00	863	9	" 221	" ----	125 00	25.00 "
" -- 20 00	864	9	" 221	" ----	230 00	30.00 "
" -- 9 00	865	9	" 221	" ----	70 00	16.00 "
" -- 10 00	866	16	" 224	" ----	115 00	15.00 "
" -- 10 00	867	16	" 224	" ----	105 00	10.00 "
	868	16	" 224	" ----	44 00	
	869	16	" 224	" ----	185 00	
" 10.00, mirror 50 00	870	16	" 224	" ----	90 00	10.00 "
Sp'g ---------- 10 00	871	16	" 224	" ----	100 00	5.00 "
" -- 10 00	872	16	" 224	" ----	165 00	30.00 "

" --	9 00	873	16	" 224	" ----------	70 00	16.00 "
* [*Page 41.]							
Sp'g ----------	10 00	874	16	Ex. No. 10 ---- 224	" ----------	105 00	$20 ab. list.
" --	10 00	875	16	" 224	" ----------	210 00	$35 "
" --	10 00	876	16	" 224	" ----------	100 00	15.00 "
" --	10 00	877	16	" 224	" ----------	155 00	20.00 "
" --	10 00	878	16	" 224	" ----------	100 00	15.00 "
" --	10 00	879	16	" 224	" ----------	80 00	
" --	10 00	880	16	" 224	" ----------	80 00	
" --	10 00	881	16	" 224	" ----------	115 00	$15.00 "
" --	10 00	882	16	" 224	" ----------	110 00	25.00 "
Duplicate of No. 728; explained on page 81.		883	24	" 224	Robinson ----------	60 00	
		884	23	" 224	Graham ----------	35 00	Duplicate of No. 826, page 84.
Sp'g ----------	10 00	885	23	" 225	New York Store ----	125 00	25.00 ab. list.
" --	10 00	886	23	" 225	" ----------	100 00	15.00 "
" 10.00, washstand	$35	887	23	" 225	" ----------	210 00	50.00 "
Sp'g ----------	10 00	888	23	" 225	" ----------	125 00	25.00 "
" --	10 00	889	23	" 225	" ----------	100 00	5.00 "
" --	10 00	890	12	F. O. C. ---- 1	Haywood & Co. ----	120 00	
" --	10 00	891	13	" ---------- 4	Barboza ----------	135 00	
		892	14	" ---------- 5	McLain ----------	35 00	
		893	16	" ---------- 7	Linn & S. ----------	35 00	
[* Page 42.]				Total for October, 1876 ----------		$10,083 00	

*Returned from Haywood Bros. & Co.

No. 0 imt. wal ----	36.00	Credited to their ac. by bills in invoice. Book E, page 161.
" 8, vend ----------	200	
" 3, " ----------	90	
" 4, " ¾ ----------	85	
" 3, " ----------	80	
" 3, plain full ----	75	
" 3, vend., ¾ ----	80	
" 3, plain, " ----	70	

Above beds are charged in master's account.

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	894	Nov. 3	S. B., A. 2 48	Matthews	$70 00	
	895	7	" 53	Hughes	57 50	7.50 ab. list.
No sp'g ch'gd	896	8	" 60	Capp	50 00	
Sp'g 10.00, mirror 40 00	897	8	" H 76	Ostheimer	167 00	17.00 "
	898	8	" A. 1 176	Drekert	50 25	
	899	8	" 2 103	Sinnickson	65 00	
Sp'g 10 00	900	8	" " 78	Davis	60 00	
Sp'g 9.00, washstand $35	901	15	" " 176	Ostheimer	189 00	$10.00 ab. list.
	902	18	C. O. B. 42	Smith	75 00	Never delivered. C. O. B., pages 42 & 56.
92						
Sp'g $10 00	903	18	C. O. B. 43	Reynolds	$85 00	
" 10 00	904	18	" 46	Collins	85 00	
" 8 00	905	18	" 50	Lloyd	47 00	86.00 ab. list.
" 9 00	906	18	" 52	Knox	70 50	Washstand, chairs, pillows, &c., included, 28.50.
" 10 00	907	18	" 53	Nagel	135 00	
" 10 00	908	4	F. O. C. 38	Perkins	230 00	
	909	6	" 40	Omer & Son	42 50	
" 10 00	910	6	" 40	During	194 00	46.50 ab. list
	911	10	" 43	Pratt	42 50	
" 10 00	912	10	" 45	Johnson	53 00	5.00 ab. list.
" 10 00	913	10	" 45	Hurlburt	190 00	30.00 "
Washstand 35 00						
Sp'g 10 00	914	11	" 47	Stebbins	100 00	
" 10 00	915	13	" 48	Hayes	104 00	
" 10 00	916	20	" 53	Hanna	60 00	
" 10 00	917	21	" 55	Ream	100 00	
" 9 00	918	23	" 58	Stebbins	89 00	
[* Page 43.]						
Sp'g 10 00	919	23	" 59	Willard	85 00	
	920	29	" 65	Kellogg	64 00	4.00 ab. list.

"	----	10 00	921		4	Ex. No. 10 ----	225	New York Store----	140 00	5.00 "
"	----	10 00	922		4	" ----	225	" ----	165 00	15.00 "
Mirror	----	50 00								
Sp'g	----	10 00	923		4	" ----	225	" ----	115 00	15.00 "
"	----	10 00	924		4	" ----	225	" ----	100 00	15.00 "
"	----	10 00	925		4	" ----	225	" ----	115 00	15.00 "
"	----	10 00	926		4	" ----	225	" ----	110 00	50.00 "
			927		4	" ----	225	" ----	75 00	
"	----	9 00	928		4	" ----	225	" ----	185 00	
Minor	----	50 00								
Sp'g	----	10 00	929		4	" ----	225	" ----	80 00	20.00 "
"	----	10 00	930		4	" ----	225	" ----	155 00	55.00 "
"	----	9 00	931		4	" ----	225	" ----	85 00	6.00 "
"	----	9 00	932		4	" ----	225	" ----	110 00	16.00 "
"	----	10 00	933		4	" ----	225	" ----	200 00	25.00 "
"	----	9 00	934		4	" ----	226	" ----	100 00	11.00 "
			935		11	" ----	226	" ----	44 00	
Spring	----	10 00	936		18	" ----	226	" ----	155 00	$20 ab. list.
"	----	10 00	937		18	" ----	226	" ----	115 00	15.00 "
"	----	10 00	938		18	" ----	226	" ----	165 00	30.00 "
"	----	9 00	939		18	" ----	226	" ----	70 00	17 00 "
"	----	10 00	940		18	" ----	226	" ----	90 00	20.00 "
"	----	10 00	941		18	" ----	226	" ----	140 00	20.00 "
"	----	10 00	942		18	" ----	226	" ----	80 00	20.00 "
"	----	9 00	943		18	" ----	226	" ----	65 00	11.00 "
[* Page 44.]										
Sp'g	----	10 00	944	Nov.	4	Ex. No. 10 ----	226	New York Store----	100 00	
"	----	10 00	945		4	" ----	226	" ----	95 00	10.00 "
			946		4	" ----	226	" ----	57 50	7.50 "
			947		4	" ----	226	" ----	52 50	10.00 "
"	----	10 00	948		4	" ----	226	" ----	110 00	20.00 "
"	----	10 00	949		4	" ----	226	" ----	125 00	25.00 "
"	----	10 00	950		4	" ----	226	" ----	110 00	20.00 "
Duplicate of No. 900	----		951		20	" ----	226	Davis ----	45 00	
Duplicate of No. 816	----		952		25	" ----	226	Merchant ----	35 00	
[*Page 45.]						Total for November, 1876----			$5,949 25	

Exhibit A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g	10 00	953	Dec. 12	C. O. B., A 109	Freeman	$100 00	
"	10 00	954	21	" 133	Trymby & Co.	70 00	
"	10 00	955	1	C. O. B., B. 58	Register	60 00	
"	8 00	956	11	" 69	Slack	87 00	4.00 ab. list.
		957	11	" 73	Monroe	35 00	
"	10 00	958	14	" 76	Haydock	135 00	
		959	22	" 93	Baird	50 00	
93		960	22	" 96	Jones	50 00	
Spring	$10 00	961	Dec. 13	F. O. B., C. 83	Haywood & Co.	$115 00	$15 above list.
"	10 00	962	15	" 88	Platt	72 00	24.00 "
		963	20	" 96	Lloyd	150 00	Duplicate of No. 989, S. B. A., 153.
"	9 00	964	21	" 97	Kemble	159 00	
" $10, washstand	35 00	965	30	" 107	Haywood & Co.	115 00	15.00 ab. list.
		966	4	Ex. No. 10 227	New York Store	65 00	30.00 "
		967	4	" 227	"	65 00	30.00 "
		968	4	" 227	"	65 00	30.00 "
		969	4	" 227	"	65 00	30.00 "
Sp'g	10 00	970	4	" 227	"	100 00	15.00 "
"	10 00	971	4	" 227	"	110 00	10.00 "
"	8 00	972	4	" 227	"	103 00	20.00 "
"	10 00	973	4	" 227	"	115 00	15.00 "
		974	16	" 227	"	90 00	15.00 "
"	10 00	975	16	" 227	"	115 00	15.00 "
"	10 00	976	16	" 227	"	165 00	30.00 "
"	10 00	977	16	" 227	"	140 00	5.00 "
[*Page 46.]							
Sp'g	10 00	978	16	Exhibit 10 227	"	165 00	30.00 "
"	10 00	979	16	"	"	150 00	30.00 "
"	10 00	980	16	"	"	110 00	25.00 "
" $9, mirror	40 00	981	16	"	"	180 00	6.00 "
"	10 00	982	23	"	"	110 00	10.00 "
"	10 00	983	23	"	"	100 00	10.00 "

"		10 00	984	23	"	"		125 00	25.00	"
"		10 00	985	30	"	"		115 00	25.00	"
"		10 00	986	30	"	"		225 00	15.00	"
"		10 00	987	30	"	"		110 00	25.00	"
			988	30	"	Mrs. Riddle		200 00	Duplicate of No. 622, page 77.	
			989	21	"	Folwell		125 00		
[*Page 47.]					Total for December, 1876			$4,111 00		
				1877.						
			990	Jan. 15	C. O. B., B.	117	Wharton	$30 00		
Spring		9 00	991	17	"	118	Clark	89 00		
			992	18	"	120	Williams	110 00	$15.00 ab. list.	
"		9 00	993	19	F. O. C.	124	Haywood & Co.	89 00		
			994	1	Exhibit 10	128	New York Store	40 00	5.00	"
"		10 00	995	13	"		"	153 00	18.00	"
"	$10, mirror	50 00	996	13	"		"	170 00	20.00	"
"		9 00	997	20	"		"	80 00	6.00	"
			998	20	"		"	145 00	10.00	"
"		10 00	999	20	"		Williams	95 00	Duplicate of No. 992, see sales book, page 218.	
			1000	20	B 1	176	Ostheimer	42 50		
[*Page 48.]					Total for January, 1877			$1,043 50		
			1001	Feb. 1	C. O. B., B.	131	Backus	$115 00	Returned J. E., page 216.	
			1002	1	"		"	50 00	Returned J. E., page 94.	
Sp'g		10 00	1003	1	F. O. C.	136	Dove & S.	115 00		
"		10 00	1004	17	"	152	Haywood & Co.	100 00		
"		9 00	1005	23	"	158	Paddock	64 00		
"		3 00	1006	1	Exhibit 10	228	New York Store	228 00		
			1007	1	"		"	150 00	$55.00 ab. list.	
			1008	1	"		"	85 00	6.00	"
"		9 00	1009	1	"		"	85 00		
"		20 00	1010	1	"		"	180 00		
"		8 00	1011	1	"		"	95 00	17.00	"
"		8 00	1012	1	"		"	100 00	7.00	"
"		10 00	1013	1	"		"	150 00		

Exhibit A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
		1014	Feb. 1	Exhibit 10	New York Store	95 00	No ch'ge for sp'g.
Sp'g	9 00	1015	1	"	"	95 00	" "
		1016	1	"	"	107 00	18.00 ab. list.
"	10 00	1017	1	"	" 2 beds	204 79	14.79 "
" $10, mirror	50 00	1018	1	"	"	130 00	30.00 "
		1019	1	"	"	290 00	5.00 "
[*Page 49.]		Total for February, 1878				$2,438 79	

☞ No credit given for one crib No. 1, and mattress returned to N. Y. Store as per returns Feb. 3rd, 1877, $35.00

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Spring	7 00	1020	Mar. 7	C. O. B., B. 162	Moore	852 00	
"	10 00	1021	12	" 167	Bennett	75 00	$10.00 for mattrass.
		1022	20	" 174	Love	42 50	
		1023	27	" 179	Scott	127 50	2.00 ab. list.
		1024	28	" 180	Collins	140 00	
		1025	3	F. O. C. 166	Schants	110 00	No ch'ge for sp'g.
"	9 00	1026	3	" 193	Seward	89 00	
		1027	30	" 199	Weimer	230 00	" 5.00 for box.
		1028	21	S. A. 299	Gopsill	35 00	
		1029	15	S. A., 1 334	Davis	45 00	
"	9 00	1030	3	Exhibit 10 229	New York Store	120 00	16.00 ab. list.
"	10 00	1031	3	" 229	"	47 50	5.00 "
"	10 00	1032	3	" 229	"	186 00	24.00 "
"	9 00	1033	3	" 229	"	140 00	25.00 "
"	10 00	1034	3	" 229	"	130 00	26.00 "
"	10 00	1035	3	" 229	"	75 00	10.00 "
" 9.00, mirror	50 00	1036	3	" 229	"	120 00	15 00 "
		1037	3	" 229	"	225 00	1.00 "

Only sp'g	5 00	1038		3	"	229	"	145 00		
"	8 00	1039		3	"	229	"	60 00	7.00	"
"	10 00	1040		3	"	229	"	130 00	15.00	"
		1041		27	"	229	Bickford	65 00		
[*Page 50.]					Total for March, 1877			$2,389 50		
Sp'g	9 00	1042	Apr.	3	O. B, B.	186	Pettit	$112 00	No allowance made for spring for stationary bed, bolster, &c.	
"	8 00	1043		3	"	190	Yeakel	48 00		
		1044		16	"	199	Cantlin	110 00	No ch'ge for sp'g.	
Howe sp'g	5 00	1045		28	"	211	Nepley	42 00	8.00 below list.	
		1046		3	"	217	Ulmer	35 00		
"	10 00	1047		3	F. O. C.	203	Stebbins	105 00		
"	10 00	1048		6	"	208	Lambert	150 00		
Spring	10 00	1049		9	"	210	Ohio F. Co.	60 00		
"	10 00	1050		7	"	211	Wooster	150 00		
"	9 00	1051		7	"	211	"	70 00	$10 ab. list.	
"	10 00	1052		7	"	211	"	89 00		
"	10 00	1053		7	"	211	"	115 00		
		1054		10	"	212	Mendill	115 00		
		1055		10	"	212	Ely	25 00		
		1056		11	"	215	Keith	45 00		
		1057		11	"	215	"	80 00		
		1058		11	"	215	Leech	130 00		
"	9 00	1059		11	"	215	Richards	104 00		
"	9 00	1060		12	"	215	Renwick	104 00		
"	10 00	1061		13	"	215	Haynes & Co.	195 00	15.00 ab. list.	
No spring ch'ged		1062		13	"	218	Weis	35 00	$10.00 below list.	
		1063		17	"	221	Richardson	64 00	Sent on sale; not sold; returned to N. Y. store. J. E. 369.	
		1064		18	"	223	Perard	47 70		
In this case two beds were sold for $110, but $155 was the basis on which the royalty was figured. [*Page 51.]		1065		19	"	224	Hayden	110 00		

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Bed & spring sold for $90, but royalty figured on $190, the list price of bed	1066	Apr. 19	F. O. C. ____ 227	Hayden ____	90 00	
	1067	11	" " 214	Bell ____	51 00	1.00 ab. list.
	1068	24	" " 230	Berrill ____	139 00	
Spring ____ $9 00	1069	24	" " 230	" ____	104 00	
" ____ 9 00	1070	24	" " 230	" ____	59 00	
	1071	25	" " 232	Schell ____	42 50	
" ____ 9 00	1072	26	" " 232	Vincent ____	104 00	
" ____ 9 00	1073	26	" " 232	" ____	69 00	
	1074	26	" " 232	" ____	42 50	
" ____ 10 00	1075	26	" " 233	Stone ____	165 00	$15.00 ab. list.
" ____ 10 00	1076	27	" " 234	Marcus ____	104 00	
" ____ 9 00	1077	27	" " 234	" ____	59 00	
" ____ 10 00	1078	1	Exhibit 10 ____ 229	New York Store ____	130 00	15.00 ab. list.
" ____ 9 00	1079	1	" " 229	" ____	119 00	15.00 "
" 10.00, mirror 50 00	1080	1	" " 229	" ____	225 00	
95	1081	Apr. 14	Exhibit 10 ____ 229	New York Store ____	42 50	$7.50 ab. list.
	1082	14	" " 229	" ____	40 00	5.00 "
Spring ____ 8 00	1083	14	" " 229	" ____	105 00	12.00 "
" ____ 10 00	1084	14	" " 229	" ____	80 00	15.00 "
" ____ 10 00	1085	14	" " 229	" ____	130 00	15.00 "
" ____ 9 00	1086	14	" " 229	" ____	100 00	11.00 "
	1087	14	" " 229	" ____	70 00	Sold at auction for $63, but full credit of $70 given plaintiff.
" ____ 8 00	1088	14	" " 229	" ____	185 00	Error in calculation $100.00.
" ____ 10 00	1089	14	" " 229	" ____	60 00	7.00 ab. list.
" ____ 9 00	1090	21	" " 229	" ____		
[* Page 52.]					110 00	21.00 ab list.

Spring	9 00	1091	21	"	229	"	119 00	$15 ab. list.
"	9 00	1092	21	"	229	"	135 00	$4 bel. "
"	9 00	1093	21	"	229	"	55 00	$4 " "
"	8 00	1094	21	"	229	"	90 00	12.00 ab. list.
"	10 00	1095	21	"	229	"	180 00	30.00 "
"	8 00	1096	21	"	229	"	100 00	7.00 "
"	10 00	1097	21	"	229	"	145 00	5.00 "
Mirror	25 00							
		1098	21	"	229	"	65 00	No sp'g ch'ged.
		1099	21	"	229	"	50 00	"
		1100	21	"	229	"	90 00	"
Sp'g	9 00	1101	21	"	229	"	119 00	$15.00 ab. list.
		1102	16	"	230	Wooster	60 00	No. sp'g ch'ged.
		1103	16	"	230	Hayden	110 00	"
		1104	16	"	230	Schlund & D.	50 00	"
		1105	17	C. O. A.	302	Hopper	115 00	Returned & credited J. E., page 315.

[*Page 53.] Total for April, 1877 ---------- $6,049 20

		1106	May 14	C. O. B., A	320	Davidson	46 00	
		1107	4	" B	218	Capp	35 00	Credited to plaintiff @ $4,000.
Howe spring	3 00	1108	4	"	221	Walter	43 00	
		1109	9	"	222	Roland	42 50	
		1110	10	"	223	Tallman	38 00	
Sp'g	8 50	1111	11	"	225	Wolverton	201 00	
Mirror	11 00							
		1112	11	"	229	Walter	12 00	
Sp'g	3 00	1113	17	"	232	Meyer	43 00	
		1114	28	"	244	Butterworth	55 00	Mattress & sp'g $9.00, ch'ged.
		1115	31	"	246	Brown	40 00	
"	9 00	1116	31	F. O. C.	240	Wooster	89 00	
"	10 00	1117	31	"	240	Burril, Comstock & Co.	135 00	
		1118	31	"	242	Wooster	50 00	
"	9 00	1119	31	"	242	"	89 00	
		1120	11	"	250	Brown	50 00	
		1121	31	"	269	Bredin	150 00	
"	10 00	1122	1	Exhibit 10	233	New York Store	280 00	30.00 ab. list.
"	9 00	1123	1	"		"	95 00	6.00 "

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g ---- 10 00	1124	May 1	Exhibit 10	New York Store	130 00	15.00 ab. list.
" ---- 10 00	1125	1	"	"	140 00	25.00 "
Exchange for bed sold & in returns of Apr. 28, '77	1126	1	"	"	115 00	
	1127	1	"	"	80 00	Credited to plaintiff 85.00.
Spring ---- 9 00	1128	1	"	"	125 00	21.00 ab. list.
" ---- 9 00	1129	1	"	"	105 00	16.00 "
" ---- 8 00	1130	1	"	"	65 00	7.00 "
[* Page 54.]						
	1131	1	Ex. No. 10 ---- 223	"	45 00	2.50 "
Spring ---- 8 00	1132	1	"	"	49 00	10.00 "
" ---- 9 00	1133	1	"	"	70 00	16.00 "
" ---- 10 00	1134	1	"	"	130 00	15.00 "
	1135	1	"	"	52 50	2.50 "
" ---- 10 00	1136	1	"	"	120 00	20.00 "
96						
	1137	May 5	Ex. No. 10 ---- 233	Brown	35 00	Duplicate of No. 1115, p'ge 94.
	1138	1	"	Cantlin	110 00	Duplicate of No. 1044, p'ge 91.
Duplicate of No. 1109 for Roland, p'ge 94	1139	5	"	Duffield	42 50	
Duplicate of No. 1108, p'ge 94	1140	11	"	Walter	35 00	
[* Page 55.]		Total for May, 1877			$2,852 50	
Spring ---- 8 00	1141	June 2	C. O. B., B. ---- 249	Procter	$53 00	
	1142	5	" ---- 252	Nusbaum	23 00	
	1143	5	" ---- 252	Pattin	70 00	
Howe spring ---- 2 00	1144	8	" ---- 256	Wells	42 00	

			1145	June	9	C. O. B., B.	258	Chamberlain	45 00	
			1146		9	"	258	Williams	36 00	Never delivered.
Sp'g		10 00	1147		18	"	267	Ellis	50 00	
"		9 00	1148		22	"	272	Poulterer	63 00	$9.00 ab list.
			1149		29	"	278	Hambrick	13 50	
"		8 00	1150		30	"	279	Bower	89 00	4.00 bel. list
"		10 00	1151		1	F. O. C.	270	Manfield	120 00	
"		10 00	1152		1	"	270	Wooster	115 00	
"		10 00	1153		1	"	270	"	135 00	
"		9 00	1154		1	"	270	"	89 00	
"		9 00	1155		1	"	271	Willauer	69 00	Boxing, &c., $7.00.
			1156		1	"	274	Connolly	45 00	
"		8 00	1157		15	"	281	Wooster	73 00	
"		10 00	1158		18	"	283	Kilpatrick	95 00	Ab. list 36.00. See S. b'k A., 447.
"		10 00	1159		18	"	283	"	115 00	Ab. list 15.00. See sales b'k A., 447.
			1160		22	"	286	Leeds	50 00	
			1161		25	"	287	Rapp	95 00	No sp'g ch'g'd.
			1162		1	Exhibit 10	234	New York Store	38 00	3.00 ab. list.
"		8 00	1163		1	"	234	"	65 00	12.00 "
"		9 00	1164		1	"	234	"	90 43	
"		10 00	1165		1	"	234	"	70 00	5.00 "
[*Page 56.]										
Mirror		40 00								
Spring		9 00	1166		9	"	234	"	208 90	
"		10 00	1167		16	"		"	65 00	$5.00 ab. list.
"		9 00	1168		23	"		"	105 00	1.00 "
"		7 57	1169		23	"		"	193 23	
"		10 00	1170		30	"		"	120 00	
"		8 00	1171		30	"		"	95 90	17.00 "
"		8 00	1172		30	"		"	49 59	
			1173		30	"		"	30 00	
			1174		30	"		"	50 00	
[*Page 57.]						Total for June, 1877			$2,665 65	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	1175	July 3	C. O. B., B. 282	Keen	$39 00	Credited to plaintiff at $42.50.
	1176	23	" 295	Fisler	52 00	No ch'ge for spring.
Sp'g 10 00	1177	25	" 297	Peterson	100 00	
	1178	31	" 301	Shoemaker	45 00	
	1179	3	F. O. C. 293	Childs	35 00	
" 9 00	1180	9	" 296	Satterfield	60 00	4.00 bel. list.
	1181	13	" 300	Hassard	90 00	$60 ab. price on order book.
This bed was transferred to Tobez Furniture Co. Jour. A, p'ge 279	1182	30	" 308	Seaman	135 00	
	1183	7	Exhibit 10 235	New York Store	200 00	30.00 ab. list. Spring 10.00; crib bed 35.00
Sp'g $10 00 Washstand 35 00	1184	7	"	"	160 00	10.00 bel. list.
Sp'g 10 00	1185	7	"	"	235 00	
" 10 00	1186	7	"	"	220 00	$50.00 ch'g'd for mirror and mattress
" 9 00	1187	7	"	"	81 00	8.00 bel. list.
	1188	14	"	"	55 00	Sp'g not ch'ged.
	1189	14	"	"	175 00	"
	1190	21	"	"	95 00	"
Spring 10 00	1191	21	"	"	80 00	$15 for mattress.
" 9 00	1192	21	"	"	160 00	No credit given for the bed ret'd in exchange for this bed.
97						
	1193	July 21	Exhibit 10 235	New York Store	90 00	Sp'g not ch'g'd.
Sp'g 10 00	1194	21	"	"	150 00	10.00 ab. list.
2 " 18 00	1195	28	"	"	150 00	$3.00 bel. list.
[*Page 58.]	Total for July, 1877				$2,407 00	

		1196	Aug. 14	C. O. B., B	310	Detrick	42 00	
Sp'g, 9.00, mirror	40 00	1197	15	"	311	Houston	225 00	$46.00 ch'g'd for altering mattress and putting mirrors in wardrobes.
		1198	20	"	313	Browning	60 00	$10 ab. list.
Sp'g	10 00	1199	24	"	317	Boyd	75 00	$10 "
		1200	29	"	319	Poulterer	35 00	
		1201	31	"	322	Keifer	37 50	5.00 bel. cost.
"	10 00	1202	11	F. O. C.	315	Johnston	65 00	
		1203	13	"	317	Darrin	35 00	
"	10 00	1204	14	"	317	Louisville Co	150 00	
		1205	14	"	317	"	84 00	
"	9 00	1206	14	"	317	"	134 00	
		1207	14	"	317	"	50 00	
		1208	15	"	318	Burrill	160 00	Returned; see Jour. A, p'ge 325, sent for exhibition.
No entry on order book		1209	31	"	328	Toby Co	140 00	
		1210	1	Exhibit 10	235	New York Store	130 00	
		1211	1	"	235	"	35 00	
Sp'g 10.00, mirror	30 00	1212	1	"	235	"	160 00	15.00 ab. list.
		1213	1	"	235	"	170 00	Sp'g not ch'ged.
Sp'g	10 00	1214	1	"	235	"	145 00	5.00 bel. list.
"	10 00	1215	18	"	235	"	145 00	5.00 "
		1216	20	"	235	"	95 00	Sp'g not ch'ged.
		1217	21	"	235	"	110 00	" "
		1218	21	"	235	"	45 00	" "
		1219	22	"	235	"	37 50	2.50 ab. list.
"	9 00	1220	22	"	235	"	145 00	21.00
[*Page 59.]								
Sp'g	10 00	1221	Aug. 22	Exhibit 10	235	New York Store	160 00	$25 ab. list.
		1222	22	"	235	"	140 00	Sp'g not ch'ged.
"	9 00	1223	25	"	235	"	100 00	11.00 ab. list.
"	10 00	1224	25	"	235	"	115 00	
		1225	25	"	235	"	95 00	Sp'g not ch'g'd.
		1226	27	"	235	"	40 00	5.00 ab. list.
"	10 00	1227	29	"	235	"	135 00	5.00 bel. "
		1228	29	"	235	"	130 00	Sp'g not ch'g'd.
[*Page 60.]				Total for August, 1877			$3,425 00	

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Spring and altering mattress, ch'g'd 10.00.	1229	Sept. 3	C. O. B., B 323	Duckett	$65 00	
	1230	3	" 324	Bower	60 00	
Sp'g 9 00	1231	4	" 325	Richards	104 00	
" 9 00	1232	4	" 326	Anable	66 00	2.00 ab. list.
Sold for $100, with sp'g master ch'ges, $10	1233	8	" 329	Diston	110 00	Sp'g not ch'g'd.
Sp'g 10 00	1234	11	" 331	Stewart	70 00	5.00 bel. list.
" 10 00	1235	12	" 332	Maxwell	88 00	23.00 ch'g'd for mattress.
	1236	13	" 333	Wolford	40 00	
" 9 00	1237	17	" 336	Parvin	100 00	4.00 bel. list.
	1238	17	" 336	Murphy	45 00	
	1239	22	" 341	Small	30 00	
" 9 00	1240	25	" 343	Patterson	89 00	
" 9 00	1241	25	" 344	Kepner	54 00	
" 10 00	1242	29	" 348	French	65 00	
	1243	29	F. O. B., C 329	Toby Co	53 00	Duplicate No. 1260, p'ge 99.
	1244	29	" 329	"	42 50	Duplicate No. 1263, p'ge 99.
" 9 00	1245	29	" 333	Middleton	54 00	
Sold without sp'gs	1246	29	" 333	Curll	55 00	
Sp'g 10 00	1247	29	" 335	Heiskell	180 00	
	1248	12	" 337	Hare	65 00	
" 10 00	1249	14	" 339	Toby Co	190 00	
sp gs 19.00, washstand $50, German glass 20.00	1250	14	" 339	Odeneal	284 00	
98	1251	21	F. O. B., C 345	Toby Co.	115 00	Duplicate of No. 1264 below.
	1252	21	" 345	"	64 00	Duplicate of No. 1265 below.
	1253	21	" 345	"	150 00	
[Page 61.]						
Sp'g 10 00	1254	21	" 345	Good	115 00	

" -- 10 00	1255	21	" -- 349	Toby Co. ----------	100 00	
" -- 9 00	1256	28	" -- 353	Harding ----------	106 50	2.50 ab. list.
" -- 10 00	1257	8	S. A. ---------- 519	Toby Co. ----------	115 00	
" -- 9 00	1258	8	" -- 519	" --	89 00	
" -- 9 00	1259	8	" -- 519	" --	64 00	
" -- 8 00	1260	8	" -- 519	" --	53 00	
" -- 9 00	1261	8	" -- 519	" --	169 00	
Mirror ---- ---- 30 00	1262	8	" -- 519	" --	84 00	Sp'g 9.00, mirror 20.00.
	1263	8	" -- 519	" --	42 50	
Sp'g ---------- 10 00	1264	21	" -- 535	" --	115 00	
" ---------- 9 00	1265	21	" -- 535	" --	64 00	
	1266	6	Exhibit 10.--- 236	New York Store ---- ----	85 00	
	1267	6	" -- 236	" --	35 00	
	1268	6	" -- 236	" --	85 00	
	1269	6	" -- 236	" --	105 00	
	1270	6	" -- 236	" --	130 00	
	1271	6	" -- 236	" --	105 00	
	1272	6	" -- 236	" --	170 00	
	1273	6	" -- 236	" --	95 00	
	1274	6	" -- 236	" --	95 00	
	1275	6	" -- 236	" --	160 00	
	1276	6	" -- 236	" --	45 00	
	1277	6	" -- 236	" --	140 00	
	1278	6	" -- 236	" --	105 00	
[*Page 62.]						
	1279	6	" -- 236	" --	105 00	
	1280	6	" -- 236	" --	105 00	
	1281	6	" -- 236	" --	80 00	
Sp'g ---------- 10 00	1282	6	" -- 237	" --	48 00	7.00 bel. list.
" ---------- 10 00	1283	6	" -- 237	" --	235 00	
	1284	6	" -- 237	" --	95 00	Sp'g not ch'ged.
Credited to plaintiff as $225.00 ----------	1285	6	" -- 237	" --	195 00	
Credited to plaintiff as basis of $130.00 --------	1286	6	" -- 237	" --	120 00	
Credited plaintiff as $140 basis ----------	1287	6	" -- 237	" --	120 00	
Credited as 90.00 ----------	1288	6	" -- 237	" --	85 00	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	1289	Sept. 25	Exhibit 10---- 237	New York Store -------	90 00	Sp'g not ch'ged.
	1290	6	" -- 237	" --	55 00	"
	1291	6	" -- 237	" --	60 00	" 5.00 ab. list.
Sp'g ---------- 10 00	1292	6	" -- 237	" --	118 00	13.00.
" ---------- 10 00	1293	6	" -- 237	" --	60 00	
" ---------- 10 00	1294	6	" -- 237	" --	180 00	
" ---------- 10 00	1295	6	" -- 237	" --	100 00	
" ---------- 10 00 }						
Mirror ------- 15 00 }	1296	6	" -- 237	" --	125 00	
Sp'g ---------- 10 00	1297	6	" -- 237	" --	115 00	
" ---------- 8 00	1298	6	" -- 237	" --	58 00	
" ---------- 10 00	1299	6	" -- 237	" --	165 00	$15 ab. list.
	1300	6	" -- 237	" --	55 00	Sp'g not ch'ged.
" ---------- 10 00	1301	6	" -- 237	" --	125 00	10 00 ab. list.
	1302	6	" -- 237	" --	140 00	Sp'g not ch'g'd.
[*Page 63.]	1303	6	" -- 237	" --	40 00	5.00 ab. list.
Credited pl'ff as basis, 95.00 ----------	1304	6	" -- 237	" --	85 00	Sp'g not ch'ged.
Sp'g---------- 10 00	1305	6	" -- 237	" --	140 00	
Credited to pl'ff at 70 00	1306	6	" -- 237	" --	56 00	
Sp'g ---------- 9 00	1307	6	" -- 237	" --	118 00	14.00 ab. list.
	1308	6	" -- 237	" --	179 00	Credited to pl'ff at 225.00.
	1309	6	" -- 237	" --	42 50	
" ---------- 10 00	1310	6	" -- 237	" --	130 00	Mattress ch'ged at 30.00.
" ---------- 9 00 }						
Mirror ------- 30 00 }	1311	6	" -- 237	" --	219 00	10.00 ab. list.
Sold with sp'g for 120 00 }						
Credited to pl'ff 140 00 }	1312	6	" -- 237	" --	120 00	
Sp'g ---------- 9 00	1313	6	" -- 237	" --	92 00	3.00 ab. list.

Spring	10 00	1314	Sept.	29	Exhibit 10	237	New York Store	115 00	
		1315		29	"	237	"	50 00	
		1316		29	"	238	"	105 00	Sp'g not ch'g'd.
Sold with sp'g. credited to pl'ff as 95.00		1317		29	"	238	"	84 00	
Sp'g	8 00	1318		29	"	238	"	78 00	
		1319		29	"	238	"	45 00	
"	10 00	1320		29	"	239	"	90 00	Ab. list 20.00
"	10 00	1321		29	"	239	"	90 00	Mirror 20.00.
		1322		29	"	239	"	40 00	
		1323		29	"	239	"	60 00	
		1324		29	"	239	"	45 00	
		1325		29	"	239	"	45 00	
Pillows ch'g'd, sp'g 10.00		1326		29	"	239	"	96 00	Ab. list 26.00.
Sp'g	5 00	1327		29	"	239	"	65 00	
"	10 00	1328		29	"	239	"	75 00	
Mirror	25 00								
[*Page 64.]									
Sp'g	9 00	1329		6	"	239	"	55 00	$1. ab. list.
		1330		6	"	239	"	43 00	3.20 "
		1331		6	"	239	"	50 00	3.00 "
		1332		6	"	239	"	48 00	
		1333		6	"	239	"	55 00	
"	9 00	1334		6	"	239	"	90 00	1.00 "
Mirror	25 00								
Sp'g	9 00	1335		6	"	239	"	55 00	1.00 "
"	10 00	1336		6	"	239	"	75 00	
"	9 00	1337		6	"	239	"	70 00	6.00 "
"	9 00	1338		6	"	239	"	70 00	6.00 "
		1339		6	"	239	"	43 00	3.00 "
		1340		6	"	239	"	50 00	
		1341		6	"	237	Ransom	45 00	
		1342		6	"	238	Keifer	42 50	Duplicates of No. 1201.
		1343		6	"	239	Church	40 00	
[*Page 65.]		Total for September, 1877						$10,480 70	

Exhibit A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g	10 00	1344	Oct. 16	O. A. 460	Devlin	$115 00	
"	7 00	1345	1	O. B. B. 350	Reynolds	52 00	
"		1346	9	" 360	McCurdy	42 50	
"	10 00	1347	9	" 360	Dixon	115 00	
"	10 00	1348	19	" 374	Armstrong	40 00	
"	10 00	1349	20	" 376	Mabin	175 00	Extra side rails $10.00, mirror 30.00.
"	9 00	1350	20	" 377	Boyd	53 00	1.00 bel list.
"	10 00	1311	23	" 378	Davis	55 00	5.00 "
"	10 00	1352	25	" 380	Keer	75 00	
	10 00	1353	28	" 382	Gilbert	115 00	
		1354	27	" 383	Richner	83 00	
		1355	31	" 387	Cotton	45 00	Never delivered, no ch'ge of any kind made.
"	10 00	1356	2	F. O. C. 356	Bancroft	115 00	
		1357	2	" 357	Gillespie	35 00	
"	9 00	1358	6	" 362	Toby Co.	64 00	
"	9 00	1359	8	" 363	Burrill	59 00	Box ch'g'd 5.00.
		1360	8	" 363	Easter	100 00	
"	16 00	1361	9	" 364	Ransom	160 00	26.00 bel. list.
"	10 00	1362	9	" 364	"	175 00	5.00 "
		1363	10	" 364	Burdell	42 50	
"	9 00	1364	12	" 366	Toby Co.	69 00	
"	10 00	1365	15	" 369	"	150 00	
"	8 00	1366	15	" 370	"	53 00	
"	9 00	1367	24	" 379	"	69 00	
		1368	29	" 382	"	35 00	
[*Page 66.]							
Sp'g	10 00	1369	31	" 384	Boyd	105 00	5.00 ab. list.
" not ch'g'd.		1370	1	Exhibit 10 240	New York Store	141 50	1.50 "
		1371	1	" 240	"	45 00	
		1372	1	" 240	"	95 00	
"	10 00	1373	1	" 240	"	65 00	5.00 "

Sp'g	8 00	1374	Oct.	1	Exhibit 10	240	New York Store	53 00		
100										
Spring	8 00	1375		6	"	240	"	110 00	$17 for mattress.	
		1376		6	"	240	"	105 00		
" $9, mirror	25 00	1377		6	"	240	"	195 00	1 00 ab. list.	
		1378		13	"	240	"	90 00		
		1379		13	"	240	"	105 00		
		1380		13	"	240	"	105 00		
Sp'g	9 00	1381		13	"	240	"	225 00	29.00 ab. list.	
"	10 00	1382		13	"	240	"	69 00	Bolster $4.00.	
		1383		13	"	240	"	40 00		
"	9 00	1384		13	"	240	"	65 00		
		1385		13	"	240	"	40 00		
		1386		13	"	240	"	40 00		
		1387		13	"	240	"	116 00	Credited to pl'ff at $140.00.	
"	9 00	1388		13	"	240	"	62 50		
"	9 00	1389		13	"	240	"	117 00	$13.00, mattress, &c.	
		1390		13	"	240	"	105 00	No ch'ge for sp'g.	
		1391		13	"	240	"	42 50		
		1392		13	"	240	"	85 00		
"	$10 00	1393		13	"	240	"	210 00	Master neglects to give credit on this item for a bed returned in exchange. $120.00. See returns, Oct. 13, 1877.	
[*Page 67.]										
		1394		20	"	240	"	105 00	No. sp'g ch'ged.	
		1395		20	"	240	"	35 00	5.00 bel. list.	
Sp'g $9, mirror	18 00	1396		20	"	240	"	75 00		
		1397		20	"	240	"	95 00	No sp'g ch'ged.	
		1398		20	"	240	"	56 00	14.00 bel. list.	
Sp'g	8 00	1399		20	"	240	"	43 00	5.00 "	
"	10 00	1400		20	"	240	"	135 00	5.00 "	
"	10 00	1401		20	"	240	"	130 00	10.00 "	
No sp'g ch'gd.		1402		20	"	240	"	100 00	5.00 "	
Sp'g $9, mirror	18 00	1403		20	"	240	"	81 00		
		1404		20	"	240	"	56 00	4.00 "	
		1405		20	"	240	"	170 00	No sp'g ch'g'd.	
		1406		20	"	240	"	140 00	"	

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Master does not allow credit on this item for No. 1¾ ven'd bed returned in exchange	1407	Oct. 20	Exhibit 10---- 240	New York Store	140 00	No sp'g ch'ged.
	1408	20	" -- 240	"	130 00	
	1409	20	" -- 241	"	60 00	Sold with sp'g for $56.00.
	1410	27	" -- 241	"	43 60	1.40 bel. list.
	1411	27	" -- 241	"	50 00	
	1412	27	" -- 241	"	40 00	
Mirror charged	1413	27	" -- 241	"	185 00	5.00 ab. list.
	1414	27	" -- 241	"	90 00	6.00 "
Spring 10 00	1415	27	" -- 241	"	110 00	5.00 bel. list.
" 10 00	1416	27	" -- 241	"	115 00	5.00 "
" 10 00	1417	27	" -- 241	"	110 00	7.00 "
" 8 00	1418	27	" -- 241	"	46 00	
[*Page 68.]		27				
Spring 900	1419	27	" -- 241	"	58 00	6.00 bel. list.
	1420	27	" -- 241	"	55 00	Spring and mirror sold, but not ch'ged for by master.
Sold for $32.50, but ch'g'd at list	1421	27	" -- 241	"	35 00	
	1422	27	" -- 241	"	98 00	4.00 ab. list.
Spring 10 00	1423	27	" -- 241	"	42 50	
" $10, mirror 30 00	1424	27	" -- 241	"	140 00	16.00 "
Sp'g 8 00	1425	Nov. 3	" -- 241	"	90 00	14.00 "
Sold for $45 00	1426	3	" -- 241	"	50 00	
Sp'g 9 00	1427	3	" -- 241	"	85 00	8.00 "
" $9, mirror 25 00	1428	3	" -- 241	"	90 00	1.00 "
Sold with sp'g	1429	3	" -- 241	"	45 00	
Sp'g 9 00	1430	3	" -- 241	"	60 00	4.00 bel. list.
	1431	2	" -- 241	"	42 50	
" 10 00	1432	3	" -- 241	"	45 00	10.00 "

" ------ ----	8 00	1433	3	"	-- 241	"	-------	85 00	8.00	"
		1434	17	"	-- 241	Smyth.	-------	35 00		
								$7,919 10		

[*Page 69.] Total for October, 1877 ----------

General Mem.: We find in examining N. Y. Store returns that where the goods have been sold at prices above the list price the master charges for the amount obtained for the goods, but where they were sold below the list prices he has invariably charged full list, according to our returns to the plaintiff.

The New York returns in this exhibit are therefore all objected to as erroneous.

101

		1435	Nov. 1	O. B. A.	478	Moore	-------	$95 00	$20.00 ab. list.
		1436	6	"	-- 483	Allen	-------	104 00	
		1437	6	O. B. B.	393	Keifer	-------	45 00	
		1438	6	"	-- 393	Pusey	-------	95 00	
		1439	9	"	-- 396	Loeb	-------	104 00	
		1440	9	"	-- 397	Pike	-------	35 00	Never delivered.
		1441	12	"	-- 399	Ulrich	-------	42 50	
Sp'g ----------	9 00	1442	14	"	-- 402	Shoemaker	-------	113 00	No credit given for crib ret'd in exchange. S. B. A. 2, 603.
		1443	22	"	-- 411	Halby	-------	85 00	
" ----------	10 00	1444	24	"	-- 414	Walter	-------	76 00	$6.00 ab. list.
		1445	26	"	-- 415	Chambers	-------	42 50	
		1446	12	F. O. C.	394	Toby Co.	-------	42 50	
" ----------	9 00	1447	12	"	-- 398	"	--	139 00	
" ----------	9 00	1448	12	"	-- 398	"	--	124 00	
" ----------	10 00	1449	14	"	-- 400	"	--	115 00	
" ----------	9 00	1450	14	"	-- 400	"	--	139 00	
" ----------	9 00	1451	14	"	-- 401	Schmidt	-------	93 00	
No sp'g ch'g'd ----		1452	22	"	-- 408	Tennessee Co.	-------	113 00	
Sp'g ----------	10 00	1453	24	"	-- 409	Toby Co.	-------	115 00	
" ----------	10 00	1454	5	Exhibit 10	242	New York Store	-------	190 00	Bed & sp'g sold for $20.00; ab. list $153.00.
" ----------	9 00	1455	5	"		"	--	50 00	4.00 bel. list.
" 9.00, mirror	30 00	1456	5	"		"	--	92 86	Mattress & mirror ch'ged for.
Mirror 30.00, sp'g	10 00	1457	5	"		"	--	150 00	5.00 ab. list.

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g ---------- 10 00	1458	Nov. 5	Exhibit 10----	New York Store--------	$60 00	10.00 bel. list.
" ---------- 10 00	1459	5	"	" --	125 00	10.00 ab. list.
[*Page 70.]						
Mirror $25.00, sp'g 10 00	1460	5	" -- 242	" --	150 00	$10.00 ab. list.
Sp'g ---------- 9 00	1461	5	" -- 242	" --	70 00	9.00 bel. list.
" ---------- 9 00	1462	5	" -- 242	" --	155 00	Washstand ch'g'd.
" ---------- 9 00	1463	5	" -- 242	" --	135 00	4.00 bel. list.
	1464	5	" -- 242	" --	45 00	Sold for $40.
" ---------- 8 00	1465	5	" -- 242	" --	50 00	Bed & sp'g sold for $50.00.
Spring ------- $10 00	1466	17	" -- 243	" --	80 00	$10 ab. list.
	1467	17	" -- 243	" --	55 00	No sp'g ch'ged.
	1468	17	" -- 243	" --	105 00	"
" ---------- 9 00	1469	17	" -- 243	" --	60 00	4.00 bel. list.
" ---------- 10 00	1470	17	" -- 243	" --	105 00	
" ---------- 9 00	1471	24	" -- 243	" --	90 00	Mirror ch'g'd.
" ---------- 9 00	1472	17	" -- 243	" --	64 00	
No spring ch'g'd --------	1473	17	" -- 243	" --	105 00	Bed & sp'g sold for $100.
Spring ---------- 9 00	1474	17	" -- 243	" --	90 00	Mirror ch'ged.
No spring ch'g'd --------	1475	17	" -- 243	" --	170 00	Bed & sp'g sold for $140.
" ----------	1476	17	" -- 243	" --	105 00	" 103.50.
" ----------	1477	17	" -- 243	" --	80 00	" 72.00.
" ----------	1478	17	" -- 243	" --	80 00	
" ----------	1479	17	" -- 243	" --	135 00	5.00 ab. list.
No credit given for bed returned in exchange; $110 on returns ----------	1480	17	" -- 243	" --	180 00	11.00 ch'g'd for mattress & pillows.
No sp'g ch'g'd ----------	1481	17	" -- 243	" --	105 00	
	1482	17	" -- 243	" --	115 00	
	1483	17	" -- 243	" --	95 00	
	1484	17	" -- 243	" --	100 00	
[*Page 71.]						

	1485	15	"	243	"	48 00
	1486	15	"		"	110 00
	1487	15	"		"	42 50
	1488	15	"		"	72 00
	1489	15	"		"	61 75
Duplicate of No. 1358, p'ge 102, sales b'k A, .605	1490	8	"		Toby Co.	55 00
[*Page 72.]	Total for November, 1877					$5,298 61
	1491	Dec. 3	C. O. B. B.	422	Marshall	$30 00
Sp'g not ch'g'd	1492	8	"	430	Donovan	105 00
"	1493	10	"	431	McClatchey	130 00
"	1494	12	"	473	Kernan	45 00
102						
Sp'g 10 00	1495	Dec. 3	F. O. C.	414	Toby Co.	$100 00
" 10 00	1496	5	"	416	"	115 00
" 9 00	1497	5	"	416	"	64 00
	1498	6	"	417	Sutherland (McNair)	35 00
" 10 00	1499	7	"	419	Toby Co.	150 00
	1500	11	"	421	Carver	50 00
" 9 00	1501	14	"	425	Toby Co.	64 00
" 8 00	1502	14	"	425	Edmundson	101 00
	1503	4	Exhibit 10	244	New York Store	115 00
	1504	4	"		"	61 75
	1505	4	"		"	175 00
	1506	4	"		"	175 00
	1507	4	"		"	65 00
	1508	4	"		"	65 00
	1509	4	"		"	42 50
	1510	4	"		"	70 00
	1511	4	"		"	245 00
	1512	4	"		"	110 00
	1513	4	"		"	40 00
	1514	4	"		"	65 00
	1515	4	"		"	80 00

[*Page 73.]

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	1516	Dec. 4	Exhibit 10---- 244	New York Store----	55 00	
	1517	4	" -- 244	" --	60 00	
	1518	4	" -- 244	" --	100 00	
	1519	4	" -- 244	" --	130 00	
	1520	4	" -- 244	" --	95 00	
	1521	4	" -- 244	" --	72 00	
	1522	4	" -- 244	" --	45 00	
	1523	4	" -- 244	" --	60 00	
	1524	4	" -- 244	" --	146 00	
	1525	14	" -- 244	Simon----	170 00	Bed' sp'g, & mattress sold for $176.
	1526	13	" -- 245	Toby Co.----	115 00	Duplicate of No. 1448, page 105.
Duplicate of Southerland, No. 1498, p'ge107. See F. O. C., p'ge 417----	1527	6	" -- 245	McNair----	35 00	
Duplicate of No. 1450, p'ge 105----	1528	13	" -- 245	Toby Co.----	130 00	
[*Page 74.]	Total for December, 1877 ----				$3,511 25	
		1878.				
Sp'g $9, mirror--- 25 00	1529	Jan. 12	C. O. B., B.--- 483	Pugh----	$89 00	
Sp'g---- 10 00	1530	18	" -- 496	McMurtrie----	95 00	
No sp'g ch'g'd----	1531	29	" -- 497	Murphy----	95 00	
	1532	5	S. A.---- 701	Newark Co.----	42 50	
Sp'g---- 8 50	1533	5	S. B. A 2---- 680	Johnson----	58 00	
	1534	4	Exhibit 10---- 245	New York Store----	105 00	
	1535	4	" -- 245	" --	35 00	
	1536	4	" -- 215	" --	113 00	
	1537	4	" -- 245	" --	35 00	
	1538	4	" -- 245	" --	45 00	
	1539	4	" -- 245	" --	105 00	
	1540	4	" -- 245	" --	60 00	

		1541	4	"	245	"		52 50
		1542	4	"	245	"		57 00
		1543	4	"	245	"		35 00
		1544	4	"	245	"		56 53
		1545	4	"	245	"		50 00
		1546	4	"	245	"		55 00
		1547	4	"	245	"		95 00
		1548	4	"	245	"		80 00
		1549	4	"	245	"		85 00
		1550	4	"	245	"		50 00
		1551	4	"	245	"		95 00
		1552	4	"	246	"		100 00
[*Page 75.]		1553	4	"	246	"		80 00
		1554	Jan. 4	Exhibit 10	246	New York Store		72 00
103		1555	4	"	246	"		95 00
		1556	4	"	246	"		50 00
		1557	4	"	246	"		110 00
Sp'gs not ch'g.		1558	21	"	246	Tucker		170 00
"		1559	21	"	246	"		170 00
[*Page 76.]		Total for January, 1878						$2,405 53
Sp'gs not ch'g		1560	Feb. 23	C. O. B., B.	517	Doyle	$108 00	$4.00 ab. list.
"		1561	23	"	517	Perkins	30 00	Sold for 28.00.
"		1562	26	"	518	Lewis	105 00	
"		1563	1	P. O. C.	462	Stiles	90 00	
Sp'g	9 00	1564	2	"	463	Nelson, Matter & Co.	104 00	
"	10 00	1565	6	"	465	Moses	90 00	
"	9 00	1566	6	"	467	Launder & Harter	124 00	
"	8 00	1567	9	"	467	Toby Co.	53 00	
"	9 00	1568	9	"	467	"	79 00	
"	9 00	1569	9	"	467	"	124 00	
"	10 00	1570	9	"	469	"	150 00	
"	8 00	1571	16	"	471	Wooster	58 00	
"	9 00	1572	16	"	471	"	64 00	
"	10 00	1573	16	"	471	"	70 00	
"	10 00	1574	16	"	471	"	140 00	
Mirror	25 00							

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g ---------- 10 00	1575	Feb. 16	P. O. C. ------ 471	Wooster ----------	$115 00	
" ---- 10 00	1576	16	" ---- 471	"		
" ---- 9 00	1577	16	" ---- 471	" ---	150 00	
	1578	16	" ---- 471	" ----	35 00	
	1579	28	" ---- 478	Toby Co. ----------	64 00	
	1580	4	Exhibit 10 ---- 246	Lindahl ----------	42 50	
	1581	4	" ---- 246	New York Store -------	31 50	
	1582	4	" ---- 246	" ----	60 00	
	1583	Feb. 4	" ---- 246	" ----	110 00	
	1584	4	" ---- 246	" ---	42 50	
[* Page 77.]	1585	4	" ---- 246	" ----	85 00	
				" ----	55 00	
	1586	Feb. 4	Exhibit 10 ---- 246	New York Store -------		
	1587	4	---- 246	"	40 00	
	1588	4	---- 246	" ----	31 50	
	1589	4	---- 246	" ---	71 10	
	1590	4	---- 246	" ----	100 00	
	1591	4	---- 246	" ----	89 00	
	1592	4	---- 246	" ----	80 00	
	1593	4	---- 246	" ----	195 00	
	1594	4	---- 246	" ----	71 00	
Duplicate of No. 1531, page 108. See O. B., p'ge 497 ----------				" ----	45 00	
	1595	1	" ---- 247	Murphy ----------	95 00	
[* Page 78.]			Total for February, 1878 ----------		$2,997 20	
No sp'g ch'g'd ----------	1596	Mar. 2	O. B. B.------ 523	Woods ----------	57 00	
" ----------	1597	4	" ---- 525	Moorhead ----------	50 00	
	1598	15	" ---- 533	Homœopathic Hospital--	55 00	Bed and sp'g, sold 50.00.

Spring		9 00	1599		9	F. O. C.	482	Toby Co.	196 00
"		10 00	1600		9	"	485	"	150 00
"		9 00	1601		21	"	403	"	79 00
			1602		23	"	496	Parry	60 00
"		8 00	1603		25	"	496	Toby Co.	58 00
"		9 00	1604		25	"	496	"	64 00
"		9 00	1605		9	"	480	"	79 00
			1606		4	Exhibit 10	247	New York Store	140 00
			1607		4	"		"	49 00
			1608		4	"		"	125 00
			1609		4	"		"	140 00
			1610		4	"		"	140 00
104			1611	Mar.	4	Exhibit 10	247	New York Store	64 00
			1612		4			"	93 00
			1613		4			"	42 50
			1614		4			"	125 00
			1615		4			"	80 00
			1616		4			"	64 00
			1617		4			"	125 00
			1618		4			"	200 00
			1619		4			"	109 00
			1620		4			"	105 00
[* Page 79.]									
			1621		4		247	"	37 60
			1622		4		247	"	100 00
			1623		4		247	"	74 00
			1624		4		247	"	64 00
			1625		4		247	"	100 00
			1626		4		247	"	140 00
			1627		4		247	"	63 00
			1628		4		247	"	70 00
Sp'g not ch'g'd			1629		4		247	Baltimore Store	105 00
"			1630		9		247	"	90 00
"			1631		16		248	"	105 00
"			1632		16		247	"	80 00
"			1633		23		247	"	50 00

Exhibit "A"—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
Sp'g not ch'g'd	1634	Mar. 23	Exhibit 10 247	Baltimore Store	$50 00	
	1635	23	" 247	"	30 00	
	1636	18	" 248	Toby Co.	115 00	Duplicate of No. 1569, page 109.
[*Page 80.]		Total for March, 1878			$3,723 10	
Never delivered. See order book	1637	Apr. 18	O. B., A 632	Philips	842 50	
No sp'g ch'g'd	1638	3	" B 548	Bannister	105 00	Sold for $90.
Sp'g 10.00	1639	3	" 555	Scott	160 00	10.00 ab list.
	1640	3	" 556	Pa. R. R. Co.	180 00	
All sp'g beds	1641	3	" 556	"	20 00	Sp'gs.
No sp'g ch'g'd	1642	3	" 557	Farelli	95 00	
	1643	3	" 561	Smith	55 00	Sold with slats $50.00.
	1644	17	" 561	Schwaller	30 00	
Sp'g 10 00	1645	25	" 568	Wolf	105 00	
" 8 00	1646	26	" 569	Carson	83 00	
" 9 00	1647	2	F. O. C. 502	Saylor	64 00	
" 9 00	1648	3	" 503	Mason	64 00	
" 10 00	1649	3	" 503	Harbach	70 00	
	1650	3	" 503	"	35 00	
" 9 00	1651	3	" 503	Hayden	104 00	
" 9 00	1652	15	" 511	Oetleib	159 00	Washstand $35.00.
" 9 00	1653	17	" 512	Swope	104 00	
" 10 00	1654	17	" 514	Wooster	70 00	
" 9 00	1655	17	" 514	"	64 00	
" 9 00	1656	18	" 514	Weaver	64 00	
" 10 00	1657	18	" 514	Wyeth	70 00	
" 10 00	1658	18	" 515	Toby Co.	70 00	
" 10 00	1659	20	" 517	"	70 00	
" 8 00	1660	22	" 517	"	58 00	

"	-- 10 00	1661		23	"	-- 518	"	--	85 00
[* Page 81.]									
		1662		24	"	-- 520	"	--	128 00
		1663		25	"	-- 520	"	--	79 00
		1664		27	"	-- 522	"	--	85 00
		1665		29	"	-- 523	"	--	44 00
		1666		29	"	-- 524	Wooster	--	44 00
		1667		29	"	-- 524	Toby Co.	--	85 00
105		1668	Apr.	1	Exhibit 10	-- 248	New York Store	--	30 00
		1669		1	"	-- 248	"	--	95 00
		1670		1	"	-- 248	"	--	90 00
		1671		1	"	-- 248	"	--	55 00
		1672		1	"	-- 248	"	--	50 00
		1673		1	"	-- 248	"	--	125 00
		1674		1	"	-- 248	"	--	42 50
		1675		1	"	-- 248	"	--	55 00
		1676		1	"	-- 248	"	--	140 00
		1677		1	"	-- 248	"	--	105 00
		1678		1	"	-- 248	"	--	60 00
		1679		1	"	-- 248	"	--	150 00
		1680		1	"	-- 248	"	--	61 00
		1681		1	"	-- 248	"	--	109 10
		1682		1	"	-- 249	"	--	79 00
		1683		1	"	-- 249	"	--	64 00
		1684		1	"	-- 249	"	--	74 00
		1685		1	"	-- 249	"	--	56 20
		1686		1	"	-- 249	"	--	70 00
[*Page 82.]									
		1687		1	"	--	"	--	35 00
		1688		1	"	--	"	--	25 00
		1689		1	"	--	"	--	105 00
		1690		1	"	--	"	--	125 00
		1691		1	"	--	"	--	125 00
		1692		1	"	--	"	--	70 00
		1693		1	"	--	"	--	50 00
		1694		1	"	--	"	--	55 00
		1695		1	"	--	"	--	130 00
		1696		1	"	--	"	--	63 00

Returned & credited, 6, 30, '78, Jour. A, 259.

EXHIBIT A—Continued.

		No.	Date.	Reference.		Purchaser.	Amount.	
		1697	Apr. 1	Exhibit 10		New York Store	$50 00	
		1698	1	"	--	" --	115 00	
		1699	1	"	--	" --	140 00	
No sp'g ch'g'd		1700	1	"	249	Baltimore Store	60 00	
"	--	1701	1	"	--	" --	50 00	
Spring	10 00	1702	1	"	--	Boston Store	70 00	
"	-- 9 00	1703	15	"	--	" --	64 00	
Duplicate of No. 1577, p'ge 109. See sales b'k A, 758		1704	1	"	--	Wooster	35 00	
[*Page 83.]		Total for April, 1878					$5,369 30	
		1705	May 1	C. O. B., B.	-- 576	Thorp	$18 00	Not a folding crib.
Sp'g	10 00	1706	7	"	-- 579	Farmer	138 00	Mirror, $25.00.
"	-- 10 00	1707	7	"	-- 579	Rubinack	138 00	Mirror, $25.00.
"	-- 9 00	1708	8	"	-- 579	Sharpless	64 00	
"	-- 10 00	1709	9	"	-- 581	Bradway	110 00	Bel. list, $5.00.
"	-- 8 00	1710	10	"	-- 587	Patten	78 00	
		1711	10	"	-- 595	Shoen	30 00	
		1712	29	"	-- 599	Leeds	44 00	
"	-- 9 00	1713	3	F. O. C.	528	Limburger	155 00	Mirror, $25.00.
"	-- 10 00	1714	3	"	-- 528	Curtis	85 00	
		1715	6	"	-- 529	Knight	180 00	Bed spring and mattress sold for $175.00.
"	-- 10 00	1716	9	"	-- 532	Toby Co.	70 00	
"	-- 10 00	1717	11	"	-- 534	Haywood & Co.	180 00	
"	-- 9 00	1718	11	"	-- 534	Toby Co.	44 00	
"	-- 10 00	1719	13	"	-- 535	" --	105 00	
"	-- 10 00	1720	17	"	-- 542	Brown	105 00	
"	-- 10 00	1721	17	"	-- 542	Toby Co.	190 00	
"	-- 9 00	1722	22	"	-- 548	Tucker	84 00	Bed sp'g & boxed sold for $55.40.

"	--	10 00	1723	24	" -- 551	Ogden	70 00
"	--	10 00	1724	17	" -- 17	Barlow	115 00
			1725	4	C. O. B., D. -- 250	New York Store	142 50
			1726	4	Exhibit 10	"	140 00
			1727	4	"	"	105 00
			1728	4	"	"	55 00
			1729	4	"	"	40 00
[*Page 84.]							
106			1730	4	Exhibit 10 -- 250	New York Store	71 00
			1731	4	" -- 250	"	63 00
			1732	4	" -- 250	"	55 00
			1733	4	" -- 250	"	70 00
			1734	4	" -- 250	"	140 00
			1735	4	" -- 250	"	64 00
			1736	4	" -- 250	"	242 00
			1737	4	" -- 250	"	82 00
			1738	4	" -- 250	"	75 00
			1739	4	" -- 250	"	28 20
			1740	4	" -- 250	"	31 00
			1741	4	" -- 250	"	104 00
			1742	4	" -- 251	"	95 00
			1743	4	" -- 251	"	60 00
			1744	4	" -- 251	"	119 00
			1745	4	" -- 251	"	86 00
			1746	4	" -- 251	"	45 00
			1747	4	" -- 251	"	95 00
			1748	4	" -- 251	"	42 00
			1749	4	" -- 251	"	95 00
			1750	4	" -- 251	"	55 00
			1751	4	" -- 251	"	15 00
			1752	4	" -- 251	"	84 00
			1753	4	" -- 251	"	57 60
			1754	4	" -- 251	"	129 00
[*Page 85.]							
			1755	4	" -- 251	"	55 00
			1756	4	" -- 251	"	31 00
			1757	4	" -- 251	"	95 00
			1758	4	" -- 251	"	85 00

Exhibit A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	1759	May 4	Exhibit 10 ---- 251	New York Store	$70 00	
	1760	4	" -- 251	"	55 00	
	1761	4	" -- 251	"	130 00	
	1762	4	" -- 251	"	200 00	
	1763	4	" -- 251	"	57 60	
	1764	4	" -- 251	"	58 00	
	1765	4	" -- 251	Baltimore Store	35 00	
No sp'g ch'g'd	1766	25	" -- 251	"	80 00	
"	1767	25	" -- 251	"	50 00	
Spring 9 00	1768	6	" -- 251	Boston Store	64 00	
" 9 00	1769	13	" -- 251	"	104 00	
" 9 00	1770	13	" -- 251	"	79 00	
	1771	13	" -- 251	"	35 00	
" 10 00	1772	13	" -- 251	"	70 00	
	1773	27	" -- 251	"	45 00	
Duplicate of No. 1664, p'ge 112	1774	9	" -- 252	Toby Co.	75 00	
[* Page 86.]		Total for May, 1878			$5,961 90	
Spring ch'gd	1775	June 5	C. O. B., B---- 605	Chapman	$65 50	Mirror ch'g'd.
Howe spring ch'g'd	1776	22	" ---- 622	Delaware Bay House	155 00	
Spring 9 00	1777	14	S. A. ---- 860	Smith	89 00	
	1778	14	" -- 861	Toby Co.	35 00	
" 9 00	1779	15	" -- 861	Burrill Co.	64 00	
	1780	28	" -- 879	Toby Co.	35 00	
" 6 25	1781	1	F. O. C. ---- 566	Holmes	181 25	Mirror ch'g'd.
" 9 00	1782	13	" -- 567	Jones	64 00	
" 9 00	1783	21	" -- 574	Mitchell	159 00	Washstand $35.00.
	1784	25	" -- 576	Grugan	22 50	This was an ordinary crib and not a folding crib.

"	8 00	1785		11	S. A. 2	850	Lane	34 00
		1786		8	Exhibit 10	252	New York Store	75 00
		1787		8	"		"	55 00
		1788		8	"		"	120 00
		1789		8	"		"	64 00
107		1790		8	"		"	125 00
		1791	June	8	Exhibit 10	252	New York Store	104 00
		1792		8	"		"	95 00
		1793		8	"		"	125 00
		1794		8	"		"	31 00
		1795		8	"		"	64 00
		1796		8	"		"	108 00
		1797		8	"		"	75 00
No sp'g ch'g'd		1798		8	" 15		Baltimore Store	60 00
Spring	9 00	1799		8	" 10		Boston Store	64 00
[*Page 87.]								
Sp'g	8 00	1800	June	24	Exhibit 10	252	Boston Store	58 00
		1801	July	1	"	252	"	35 00
"	8 00	1802		1	"	252	"	58 00
[*Page 88.]		Total for June, 1878						$2,219 75
Spring	9 00	1803	July	10	F. O. C	584	T. by Co	$44 00
		1804		10	"	584	"	35 00
Spring	9 00	1805		23	"	588	"	79 00
"	10 00	1806		24	"	590	Schantz	180 00
"	9 00	1807		25	"	590	Toby Co	139 00
"	9 00	1808		25	"	590	"	79 00
		1809		25	"	590	"	50 00
		1810		27	"	591	"	35 00
"	9 00	1811		27	"	593	"	69 00
Tucker sp'g	6 00	1812		18	S. A. 2	886	Stavers	36 00
		1813		1	Exhibit 10	253	New York Store	72 00
		1814		1	"	253	"	95 00
		1815	July	1	"	253	"	185 33

Exhibit A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
		1816	July 1	Exhibit 10 ... 253	New York Store ...	$60 31	
		1817	1	" ... 253	" ...	30 00	
		1818	1	" ... 253	" ...	85 00	
		1819	1	" ... 253	" ...	105 00	
		1820	27	" ... 254	" ...	200 50	
		1821	27	" ... 254	" ...	35 00	
		1822	27	" ... 254	" ...	55 00	
		1823	27	" ... 254	" ...	120 35	
		1824	15	" ... 253	Boston Store ...	30 00	
Sp'g ...	9 00	1825	15	" ... 253	" ...	104 00	
" ...		1826	15	" ... 253	" ...	35 00	
" ...	9 00	1827	26	" ... 254	" ...	95 00	$15 above list.
No sp'g ch'g'd ...		1828	26	" ... 254	Farnall ...	55 00	
[*Page 89.]				Total for July, 1878 ...		$2,108 49	
Spring ...	10 00	1829	Aug. 26	C. O. B., E ... 30	Crispin ...	$85 00	
		1830	26	" ... 31	Keslar ...	30 00	No such am't on order book.
" ...	9 00	1831	7	F. O. C. ... 595	Doud ...	49 00	
" ...	10 00	1832	7	" ... 596	Toby Co ...	225 00	
		1833	7	" ... 596	" ...	150 00	
		1834	7	" ... 596	" ...	45 00	
		1835	12	" ... 598	Welday ...	188 00	
" ...	9 00	1836	15	" ... 600	Wooster ...	114 00	
		1837	24	" ... 607	Wells ...	85 00	Never delivered.
" ...	9 00	1838	28	" ... 610	Toby Co ...	79 00	
" ...	9 00	1839	28	" ... 610	" ...	103 50	$14.50 ab. list.
		1840	10	S. A ... 916	Hale ...	35 00	
" ...	9 00	1841	15	" ... 918	Toby Co ...	124 00	

Sp'g ---- ---- ----	8 00	1842	Aug. 20	S. A. ---- ----924	Edmundston ---- ------	38 00	
" ---- ---- ----	9 00	1843	20	" --924	" --	44 00	
" ---- ---- ----	9 00	1844	20	" --924	" --	64 00	
		1845	20	" --924	" --	35 50	
Sp'g ---- ----	9 00	1846	20	" --924	" --	79 00	
		1847	20	" --924	" --	82 00	Sp'g, 9.00; mirror, 18.00.
		1848	20	" --924	" --	104 00	Sent on sale; ret'd & credited 2, 6, 80. S. M. E. 39.
Sp'g 9, mirrors ---	25 00	1849	20	" --924	" --	129 00	
		1850	20	" --924	" --	150 00	Ret'd & credited 2, 10, 79. Inv. B, 232.
		1851	20	" --924	" --	114 00	Ret'd & cred't'd 6, 2, 79. Inv. B, 232.
		1852	24	" --931	" --	208 00	Ret'd & credited 1, 10, 79. Inv. B, 201.
		1853	29	" --935	Penna. R. R. Co ----	49 50	No such order on the books anywhere. Refer to sales book A, 935.
[* Page 90.]							
		1854	13	S. A. 2 ---- --899	Wyeth ----	32 50	2.50 above.
		1855	24	" --908	" --	45 00	Ret'd & credited on bill for this item.
		1856	29	" --910	Brown ---- ----	30 00	
Sp'g ---- ----	9 00	1857	31	" --911	Crump ---- ----	64 00	
Mirror & sp'g ----	25 00	1858	31	" --912	Evans ---- ----	100 00	
Sp'g ---- ----	10 00	1859	2	S. A. 1 ---- --828	Walsh ---- ----	115 00	
		1860	1	Exhibit 10 ---- 254	New York Store ---	55 00	
		1861	1	" --254	" --	69 00	
		1862	1	" --254	" --	180 00	
		1863	1	" --254	" --	125 00	
		1864	1	" --254	" --	35 00	
		1865	16	" --254	" --	95 00	
		1866	16	" --254	" --	60 00	
		1867	16	" --254	" --	85 00	
		1868	16	" --254	" --	85 00	
		1869	16	" --254	" --	35 00	
		1870	16	" --254	" --	50 00	
		1871	16	" --254	" --	35 00	
		1872	16	" --254	" --	64 00	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	1873	Aug. 16	Exhibit 10 ---- 254	New York Store ----	$35 00	
	1874	16	" --254	" --	44 00	
	1875	16	" --254	" --	35 00	
	1876	16	" --254	" --	73 80	
	1877	16	" --254	" --	130 00	
	1878	16	" --254	Boston Store ----	40 00	
	1879	16	" --254	" --	30 00	
	1880	16	" --255	" --	35 00	
Sp'g ---- 9 00	1881	16	" --255	" --	64 00	
	1882	16	" --255	" --	35 00	
Sp'g 9, mirror ---- 25 00	1883	16	" --255	Baltimore Store ----	114 00	
Sp'g ---- 9 00	1884	16	" --255	" --	44 00	
	1885	20	S. A. ---- 926	Edmondston ----	45 00	
	1886	26	Exhibit 10 ---- 255	Filbert ----	35 00	
[* Page 91.]			Total for August, 1878 ----		$4,528 30	
Sp'g ---- 9 00	1887	Sept. 2	F. O. C. ---- 612	Toby Co. ----	$114 00	
Duplicate of No. 2043, p'ge 125.	1888	4	" --614	Mason ----	155 00	This bed was sent Mason & Co., but charged to N. Y. Store, and is in their returns of Oct. 26, '78.
Sp'g ---- 10 00	1889	7	" --616	Toby Co. ----	35 00	
" ---- 9 00	1890	9	" --617	Wooster ----	190 00	
" ---- 9 00	1891	10	" --617	Toby Co. ----	79 00	
" ---- 9 00	1892	12	" --619	R. & D. R. R. ----	64 00	
" ---- 9 00	1893	18	" --622	Toby Co. ----	64 00	
" ---- 8 00	1894	18	" --622	" --	119 00	
" ---- 9 00	1895	18	" --622	" --	48 00	
" ---- 9 00	1896	18	" --622	" --	79 00	
Sp'g & washstand $49 00	1897	20	" --624	Bush ----	64 00	
	1898	27	" --627	Bouncer ----	164 00	

		1899	11	S. A. 2	931	Engel	35 00	
Sp'g	9 00	1900	11	"	936	Wilson	85 00	4.00 below list.
"	8 00	1901	8	"	943	Stelwagen	38 00	
		1902	26	"	948	Van Culen	95 00	Sp'g not charged.
		1903	20	"	948	Cantlin	20 00	Not a patent folding crib.
109								
Sp'g	10 00	1904	Sept. 27	S. A. 2	967	Bache	115 00	
		1905	28	"	970	McGill	69 00	9.00 ab. list.
		1906	10	C. O. D.	82	Barlow	42 50	
		1907	4	C. O. E.	36	Peterson	35 00	
		1908	9	"	41	Diston	40 00	
Ret'd O. B. E., 79		1909	10	"	43	Hanmore	32 00	45.00 for mirror & pillows & bolster.
Sp'g	10 00	1910	12	"	47	Price	120 00	
		1911	30	"	65	Abrisquesta	125 00	35.00 ch'g'd for mirrors, sp'g mattresses, &c.
[*Page 92.]								
		1912	1	Exhibit 10	255	New York Store	60 00	
		1913	1	"		"	48 50	
		1914	1	"		"	31 00	
		1915	1	"		"	175 00	
		1916	1	"		"	60 00	
		1917	1	"		"	64 00	
		1918	1	"		"	35 00	
		1919	1	"		"	55 00	
		1920	1	"		"	85 00	
		1921	1	"		"	85 00	
		1922	1	"		"	140 00	
		1923	1	"		"	30 00	
		1924	1	"		"	39 60	
		1925	1	"		"	55 00	
		1926	1	"		"	70 00	
		1927	1	"		"	92 00	
		1928	1	"		"	63 00	
		1929	1	"		"	140 00	
		1930	1	"		"	75 00	
		1931	1	"		"	39 00	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	1932	1	Exhibit 10	New York Store	$140 00	
	1933	1	"	"	115 00	
	1934	1	"	"	35 00	
	1935	1	"	"	35 00	
	1936	1	"	"	95 00	
[*Page 93.]						
	1937	Sept. 1	Exhibit 10 255	New York Store	38 00	
	1938	1	" 255	"	70 00	
	1939	1	" 255	"	54 00	
	1940	1	" 255	"	140 00	
	1941	1	" 255	"	30 00	
	1942	1	" 255	"	112 00	
	1943	1	" 255	"	56 50	
	1944	1	" 255	"	55 00	
	1945	1	" 255	"	35 00	
	1946	1	" 255	"	120 00	
	1947	1	" 255	"	150 00	
	1948	1	" 255	"	114 00	
	1949	1	" 255	"	64 00	
	1950	1	" 255	"	126 00	
	1951	1	" 255	"	98 60	
	1952	1	" 255	"	85 00	
	1953	1	" 255	"	35 00	
	1954	1	" 255	"	30 00	
No ch'g made for the Howe sp'g sold with this bed	1955	1	" 256	Baltimore Store	126 00	Should be $40.00 as it was an exch'ge.
	1956	1	" 256	"	30 00	
	1957	1	" 256	"	35 00	
Sp'g 10	1958	1	" 256	Boston Store	64 00	
" 9	1959	1	" 256	"	64 00	
" 10	1960	1	" 256	"	70 00	

"	-- 9	1961		1	"	---- 256	"	----	64 00	
"	-- 10	1962		1	"	---- 256	"	----	150 00	
[*Page 94.]					Total for September, 1878				$5,904 70	
		1963	Oct.	1	F. O. C.	---- 629	Richards & Belden	----	35 00	
Sp'g	-- 10	1964		3	"	---- 631	Wooster	----	75 00	5 00 ab. list.
"	-- 9	1965		3	"	---- 631	"	----	64 00	
110										
Sp'g	9 00	1966	Oct.	4	F. O. C.	---- 632	Toby Co.	----	$119 00	
"	---- 9 00	1967		4	"	---- 632	"	----	64 00	
"	---- 9 00	1968		4	"	---- 632	Kinkead	----	79 00	
		1969		11	"	---- 637	Toby Co.	----	35 00	
"	---- 9 00	1970		12	"	---- 639	"	----	79 00	
"	---- 9 00	1971		16	F. O. F.	---- 2	Gibson	----	89 00	
"	---- 9 00	1972		18	"	---- 3	Towells	----	44 00	
"	---- 9 00	1973		18	"	---- 3	"	----	54 00	
"	---- 9 00	1974		18	"	---- 3	"	----	69 00	Mirror, 15.00.
"	---- 9 00	1975		18	"	---- 5	Hayden	----	179 00	
Troy sp'g	---- 4 00	1976		7	C. O. D.	---- 102	Smith	----	129 00	
Sp'g	---- 9 00	1977		1	C. O. E.	---- 67	Phillips	----	34 00	
		1978		1	"	---- 68	Hentz	----	64 00	
		1979		2	"	---- 68	McEvoy	----	42 00	$12.00 chg'd for Troy sp'g and mattress.
"	---- 9 00	1980		5	"	---- 71	Baldwin	----	189 00	$10.00 for mirror and a table.
"	---- 16 00	1981		8	"	---- 73	Bliss	----	73 00	$3.00 bel. list.
"	---- 9 00	1982		8	"	---- 77	McCurdy	----	64 00	
		1983		12	"	---- 78	Alleman	----	50 00	10.00 "
"	---- 9 00	1984		14	"	---- 79	Hammore	----	79 00	
"	---- 10 00	1985		22	"	---- 86	Elliott	----	190 00	
"	---- 9 00	1986		26	"	---- 91	Downing	----	75 00	4.00 "
"	---- 8 00	1987		26	F. O. F.	---- 12	Hayes	----	57 00	1.00 "
"	---- 9 00	1988		29	"	---- 12	Jones	----	75 00	4.00 "
		1989		17	S. A.	---- 999	Williams	----	45 00	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.
[* Page 95.]	1990	Oct. 5	Exhibit 10---- 257	New York Store----------	874 00
	1991	5	"	" ----	175 00
	1992	5	"	" ----	63 00
	1993	5	"	" ----	116 08
	1994	5	"	" ----	100 00
	1995	5	"	" ---	44 00
	1996	5	"	" ----	150 00
	1997	5	"	" ----	105 00
	1998	5	" ---- 257	" ----	74 00
	1990	5	"	" ----	64 00
	2000	5	"	" ----	35 00
	2001	5	"	" ----	104 00
	2002	5	"	" ----	55 00
	2003	5	"	" ----	70 00
	2004	5	"	" ----	35 00
	2005	5	"	" ----	80 00
	2006	5	"	" ----	35 00
	2007	5	"	" ----	105 00
	2008	5	"	" ----	125 00
	2009	5	"	" ----	125 00
	2010	5	"	" ----	31 00
	2011	5	"	" ----	95 00
	2012	5	"	" ----	95 00
	2013	5	"	" ----	70 00
	2014	5	"	" ----	74 00
[* Page 96.]	2015	5	" ---- 257	" ----	67 55
	2016	5	"	" ----	74 00
	2017	5	"	" ----	110 00
	2018	5	"	" ----	35 00
	2019	5	"	" ----	35 00

	2020		5	"		"	55 00
	2021		5	"		"	75 00
	2022		5	"		"	42 50
	2023		5	"		"	104 60
	2024		5	"		"	44 00
	2025		5	"		"	74 00
	2026		5	"		"	115 00
	2027		5	"		"	165 00
	2028		5	"		"	60 00
	2029		5	"		"	35 00
111	2030	Oct.	5	Exhibit 10	257	New York Store	45 50
	2031		5	"		"	55 00
	2032		5	"		"	55 00
	2033		5	"		"	185 00
	2034		5	"		"	45 00
	2035		5	"		"	174 00
	2036		5	"		"	56 40
	2037		5	"		"	50 00
	2028		5	"		"	55 00
	2039		5	"		"	79 00
[*Page 97.]							
	2040		4	"	257	"	180 00
	2041		4	"	257	"	180 00
	2042		4	"	257	"	35 00
	2043		4	"	258	"	178 29
	2044		4	"	258	"	55 00
	2045		4	"	258	"	58 00
	2046		4	"	258	"	79 00
	2047		4	"	258	"	48 40
	2048		4	"	258	"	48 40
	2049		4	"	258	"	75 00
	2050		4	"	258	"	70 00
	2051		4	"	258	"	121 50
	2052		4	"	258	"	115 43
	2053		4	"	258	"	75 00
	2054		4	"	258	"	75 00
	2055		4	"	258	"	160 00
	2056		4	"	258	"	63 00
	2057		4	"	258	"	58 00

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
		2058	Oct. 4	Exhibit 10. . . 258	New York Store	$143 00	
		2059	4	" 259	Boston Store	55 00	
		2060	4	" 259	"	79 00	
		2061	4	" 259	"	50 00	
		2062	4	" 259	"	53 00	
Troy sp'g	5 00	2063	4	" 259	"	40 00	
Sp'g	10 00	2064	4	" 259	"	92 50	
[*Page 98.]							
"	9 00	2065	5	" 259	"	64 00	
"	10 00	2066	5	" 259	"	85 00	
"	10 00	2067	5	" 259	"	70 00	
		2068	5	" 259	"	55 00	
"	10 00	2069	5	" 259	"	150 00	
No sp'g ch'g'd		2070	5	" 259	Baltimore Store	70 00	
"		2071	5	" 259	"	55 00	
"		2072	5	" 259	"	105 00	
"		2073	5	" 259	"	45 00	
"		2074	5	" 259	"	45 00	
		2075	5	" 260	Bache	50 00	No sp'g ch'g'd.
Duplicate of No. 1896, p'ge 20		2076	5	" 260	Toby Co.	70 00	
[* Page 99.]		Total for October, 1878				$9,132 65	
		2077	Nov. 1	S. B. 1 35	Metzler	60 00	
Troy sp'g	3 00	2078	6	" 39	Franck	33 00	
Sp'g	9 00	2079	27	" 59	Martin	119 00	
"	9 00	2080	27	" 61	Jenks	80 00	$1.00 ab. list.
"	9 00	2081	23	S. B. 2 64	Cornell	127 00	3.00 "
"	8 00	2082	1	S. B. 20	Toby Co.	58 00	
"	9 00	2083	1	" 20	"	64 00	

" ------	9 00	2084	2	" ------ 22	" ------	79 00	
" ------	9 00	2085	12	" ------ 34½	" ------	79 00	
" ------	18 00	2086	14	" ------ 39	" ------	158 00	
" ------	10 00	2087	17	" ------ 47	Da Costa & Clark ------	210 00	Mirror $20,00.
" ------	9 00	2088	27	" ------ 57	Toby Co. ------	44 00	
" ------	9 00	2089	10	C. O. E. ------ 97	Barton ------	95 00	
		2090	26	" ------ 117	Fleming ------	140 00	
112							
Troy sp'g ------	$4 00	2091	Nov. 7	F. O. F. ------ 18	James ------	$34 00	
" ------	10 00	2092	22	" -- 27	Toby Co. ------	85 00	
		2093	23	" -- 27	Fenner ------	70 00	
		2094	23	" -- 27	" --	35 00	
Sp'g. 9.00, mirror	$20	2095	23	" -- 27	" --	124 00	
Sp'g ------	9 00	2096	29	" -- 31	Wooster ------	59 00	
" ------	9 00	2097	29	" -- 31	" --	84 00	
		2098		P'b'gh return ------	Edmundson ------	44 00	Duplicate of No. 1843.
		2099	9	Exhibit 10 ---- 260	New York Store ------	100 00	
		2100	9	" -- 260	" --	93 00	
		2101	9	" -- 260	" --	85 00	
[*Page 100.]							
		2102	9	" -- 260	" --	135 00	
		2103	9	" -- 260	" --	43 61	
		2104	9	" -- 260	" --	80 00	
		2105	9	" -- 260	" --	79 51	
		2106	9	" -- 260	" --	64 00	
		2107	9	" -- 260	" --	120 00	
		2108	9	" -- 260	" --	35 00	
		2109	9	" -- 260	" --	85 00	
		2110	9	" -- 260	" --	98 33	
		2111	9	" -- 260	" --	75 00	
		2112	9	" -- 260	" --	190 00	
		2113	9	" -- 260	" --	150 00	
		2114	9	" -- 260	" --	50 00	
		2115	9	" -- 260	" --	117 56	
		2116	9	" -- 260	" --	70 00	
		2117	9	" -- 260	" --	57 00	
		2118	9	" -- 260	" --	24 33	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
	2119	Nov. 9	Exhibit 10---- 260	New York Store -------	35 00	
	2120	9	" -- 260	" --	35 50	
	2121	9	" -- 260	" --	35 00	
	2122	9	" -- 260	" --	59 00	
	2123	9	" -- 260	" --	85 00	
	2124	29	" -- 261	Boston Store-------	62 00	
Sp'g ------ 8 00	2125	9	" -- 261	" --	58 00	
" ------ 9 00	2126	9	" -- 261	" --	54 00	
[*Page 101.]						
Sp'g ------ 4 50	2127	9	" -- 261	" --	49 50	
	2128	18	" -- 261	" --	30 00	
	2129	9	" -- 261	" --	30 00	
" ------ 10 00	2130	11	" -- 261	" --	115 00	
" ------ 9 00	2131	9	" -- 261	" --	104 00	
" ------ 9 00	2132	9	" -- 261	" --	124 00	Mirror $20.00.
" ------ 9 00	2132	9	" -- 261	Baltimore Store -------	96 00	Mirror $20.00.
" included ------ --	2133	9	" -- 261	" --	52 67	Net price returned by Baltimore Store.
" " ------	2134	9	" -- 261	" --	22 67	Net price returned by Baltimore Store.
" " ------	2135	16	" -- 261	" --	40 00	Net price returned by Baltimore Store.
Mattress & spring included	2136	9	" -- 261	" --	72 67	Net price returned by Baltimore Store.
Spring included ------	2137	9	" -- 261	" --	29 33	Net price returned by Baltimore Store.
	2138	8	" -- 262	Franck ------	33 00	Duplicate of No. 2078.
Duplicate of No. 1985, p'ge 123------	2139	13	" -- 262	Elliott ------	135 00	
Troy sp'g------ 5 00	2140	19	" -- 262	Hoag ------	42 00	

	" not ch'g		2141	26	"	262	Peabody House		29 70	
			2142	9	"	262	James		37 00	Duplicate of No. 2091.
									$5,099 38	

[* Page 102.] Total for November, 1878

In charging returns from Boston & Baltimore Stores the master charges Boston returns at list prices and the Baltimore returns at net prices, which are returned with each item on the returns "figured net," while the Boston Store send a statement with gross prices, and the discount taken off the total and making their *net* prices *precisely* the same as those of the Baltimore Store.

		2143	Dec. 14	S. B. 2	83	Lowrey		$35 00	
		2144	26	"	103	Tatnall		31 50	
Sp'g	8 00	2145	2	S. B.	61	Toby Co.		58 00	
"	10 00	2146	7	"	67	"		190 00	
"	9 00	2147	10	"	76	Hayden		44 00	
"	9 00	2148	10	"	76	"		54 00	
"	9 00	2149	10	"	76	"		79 00	
"	9 00	2150	10	"	76	"		79 00	
113									
Sp'g	8 00	2151	10	S. B.	76	Toby Co.		58 00	
"	8 00	2152	10	"	76	"		48 00	
"	9 00	2153	10	"	76	"		79 00	
		2154	10	"	74	Newark Co.		105 00	
"	9 00	2155	17	"	77½	Toby Co.		104 00	
		2156	17	"	77	Walter Haywood Chair Co.		50 00	
"	9 00	2157	21	"	83	Toby Co.		64 00	
"	9 00	2158	27	F. S. B.	90	"		79 00	
		2159	13	C. O. E.	132	Wilson		40 00	$5 for mattress.
Troy sp'g	3 00	2160	26	"	158	Robinson		38 00	
		2161	19	F. O. F.	45	Rorrason		55 00	
		2162	21	"	47	Rambo		30 00	$25 for mattress Troy sp'g, and boxing.
		2163	7	Exhibit 10	262	New York Store		104 00	
		2164	7	"		"		37 50	
		2165	7	"		"		235 00	
		2166	7	"		"		32 50	

EXHIBIT A—Continued.

	No.	Date.	Reference.	Purchaser.	Amount.	
[*Page 103.]	2167	Dec. 7	Exhibit 10 ---- 262	New York Store ----------	$35 00	
	2168	7	" -- 262	" ----------	44 41	
	2169	7	" -- 262	" ----------	49 00	
	2170	7	" -- 262	" ----------	54 00	
	2171	7	" -- 262	" ----------	89 00	
	2172	7	" -- 262	" ----------	80 00	
	2173	7	" -- 262	" ----------	27 00	
	2174	7	" -- 262	" ----------	150 00	
	2175	7	" -- 262	" ----------	58 00	
	2176	7	" -- 262	" ----------	71 14	
	2177	7	" -- 262	" ----------	150 00	
	2178	7	" -- 262	" ----------	72 20	
	2179	7	" -- 262	" ----------	59 15	
	2180	7	" -- 262	" ----------	40 00	
				" ----------	40 00	
	2181	7	" -- 262	" ----------	27 00	
	2182	7	" -- 262	" ----------	74 00	
	2183	7	" -- 262	" ----------	29 00	
	2184	7	" -- 262	" ----------	79 00	
	2185	7	" -- 262	" ----------	85 00	
	2186	7	" -- 262	" ----------	77 25	
	2187	7	" -- 262	" ----------	120 00	
	2188	7	" -- 262	" ----------	34 00	
	2189	7	" -- 263	Baltimore Store ----------	71 00	{ See mem., page 128.
	2190	7	" -- 263	" ----------	20 00	
	2191	7	" -- 263	Boston Store ----------	130 00	
Sp'g ---------- 9 00	2192	7	" -- 263	" ----------	235 00	
[*Page 104.]						
Sp'g ---------- 8 00	2193	7	" -- 263	" ----------	58 00	

"	9 00	2194		"	"	79 00	
"	10 00	2195		"	"	100 00	
"	9 00	2196		"	"	64 00	
"	8 00	2197		"	"	93 00	
		2198		"	"	35 00	
		2199	4	P. C.	Fleming	140 00	
Duplicate of No. $20.90		2200	26	"	Schultz	45 00	

Total for December, 1878 ..... $4,343 65

[*Page 105.]

1879.

Sp'g	10 00	2201	Jan'y 3	S. B. 1	103	Harding	$110 00	$5 ab. list.
"	7 00	2202	10	"	109	Weamer	42 00	
		2203	7	S. B. 2	115	Annie Winters	170 00	Bed, sp'g mattress, and mirrors sold for $200.
		2204	14	"	121	Weamer	15 00	
Troy, sp'g	6 90	2205	18	"	126	Kohn	36 90	
Sp'g	10 00	2206	24	"	133	Wood	90 00	Mirror $20.
		2207	28	"	133½	Mench	75 00	
114								
Sp'g	10 00	2208	Jan'y 16	S. B.	102	Bringhurst	145 00	25.00 for matt.
		2209	18	"	103	Toby Co.	35 00	
		2210	18	"	103	"	42 50	
Sp'g	10 00	2211	18	"	104	Fenn	80 00	
"	9 00	2212	18	"	104	Yungling	70 00	
		2213	22	F. O. F.	65	Bancroft	51 00	1.00 ab. list.
"	9 00	2214	31	"	66	Findlay	108 50	44.50 for extra (Tucker) sp'g dressing case, & 1 commode.
		2215	4	N. Y. return			39 60	
		2216	4	"			41 00	
		2217	4	"			34 00	
		2218	11	Exhibit 10	264	New York Store	46 84	
		2219	11	"		"	177 80	
		2220	11	"		"	149 00	
		2221	11	"		"	38 00	
		2222	11	"		"	75 00	

EXHIBIT A—Continued.

		No.	Date.	Reference.	Purchaser.	Amount.	
		2223	Jan'y 11	Exhibit 10	New York Store	$65 00	
		2224	11	"	"	39 00	
		2225	11	"	"	95 00	
[*Page 106.]							
		2226	11	Exhibit 10 264	New York Store	165 00	
		2227	11	"	"	95 00	
		2228	11	"	"	31 50	
		2229	11	"	"	55 00	
Sp'g	10 00	2230	6	"	Boston Store	70 00	
"	55 00	2231	6	"	"	64 00	
		2232	27	"	"	85 00	
"	10 00	2233	27	"	"	65 10	The returns show an exchange of a $3\frac{3}{4}$'' ven. for a $3\frac{1}{2}$'' ven., returned at a net difference of $7.70, which am't should have been entered instead of $65.10.
		2234	18	"	Balto. Store	93 00	
		2235	Feb. 1	"	"	79 00	
		2236	1	"	"	35 00	
		2237	23	P. C.	Orr	66 00	
Sp'g	9 00	2238	24	"	Marks	82 00	
[*Page 107.]		Total for January, 1879				$2,856 74	
Sp'g	5 00	2239	Feb'y 24	S. B. 1 149	Heritage	$40 00	
		2240	3	" 155	Patton	42 00	
		2241	1	S. B. 2 136	Kramer	75 00	
Sp'g	10 00	2242	1	" 136	Johnson	70 00	
		2243	15	" 149	Gilbert	115 00	5.00 ag. list.
Sp'g	9 00	2244	M'ch 1	" 158	Franklin	140 00	1.00 "
"	8 00	2245	6	S. B. 121	Crozer	90 00	1.00 "

"		18 00	2246		8	"	121
"		9 00	2247	Feb.	11	"	123
"		9 00	2248		15	"	128
"		10 00	2249		15	"	128
			2250		15	"	128
			2251		17	"	130
			2252		20	"	133
			2253		21	"	137
			2254		3	"	145
			2255		3	"	145
			2256		4	"	146
			2257		6	"	147
			2258		6	"	147

Shapley		55 00
Toby Co.		158 00
"		64 00
"		79 00
"		85 00
"		35 00
Flinger		58 00
Toby Co.		64 00
"		79 00
Edmundson		105 00
Toby Co.		64 00
"		69 00
"		94 00

[*Page 108.] Total for February, 1879 ..... $1,581 00

[The matter in the two outside columns of the above Exhibit, is written in red ink in the original copy.]

115 CR.

Date.	Amount.	Days.	Interest.	Total.
1874.				
Nov. 14	$37 59	1,487	$9 42	$47 01
Dec. 2	50 23	1,469	12 24	62 47
1875.				
Jan. 6	59 98	1,434	14 34	74 32
Feb. 1	20 00	1,408	4 69	24 69
" 8	24 71	1,401	5 84	30 55
Mar. 4	50 00	1,377	11 48	61 48
" 10	20 00	1,371	4 57	24 57
Apr. 10	95 55	1,340	21 44	116 99
May 10	118 49	1,310	25 98	144 47
June 3	25 00	1,286	5 36	30 36
" 10	68 86	1,279	14 71	83 57
July 10	47 12	1,249	9 79	56 91
Aug. 20	19 14	1,208	14 24	33 38
Sept. 10	72 46	1,187	14 24	86 70
Oct. 14	212 03	1,153	40 74	252 77
Nov. 15	118 49	1,121	22 05	140 54
Dec. 22	158 93	1,084	28 73	187 66
1876.				
Jan. 10	160 85	1,065	28 58	189 43
Feb. 29	69 53	1,015	11 84	81 37
Mar. 14	50 00	1,001	8 34	58 34
" 27	82 74	988	13 67	96 41
April 10	211 62	974	34 41	246 03
May 24	183 07	930	28 37	211 44
June 20	196 47	903	29 50	225 97
July 11	170 91	882	25 14	196 05
Aug. 11	112 17	851	15 89	128 06
Sept. 11	118 54	820	16 26	134 80
Oct. 10	120 00	790	15 80	135 80
" 11	353 64	789	46 55	400 19
" 11	140 09	789	18 41	158 50
" 18	30 00	782	3 91	33 91
Nov. 9	120 00	761	15 22	135 22
" 10	221 31	760	27 97	249 28
Dec. 19	226 05	720	27 12	253 17
1877.				
Jan. 13	131 60	696	15 31	146 91
Feb. 10	57 05	669	6 35	63 40
Mar. 10	99 24	641	10 58	109 82
Apr. 10	62 06	610	6 30	68 36
May 14	152 40	576	14 56	166 96
" 11	25 00	579	2 41	27 41
June 2	25 00	556	2 32	27 32
" 12	118 87	546	10 83	129 70
July 10	114 65	519	9 95	124 60
Oct. 16	618 51	421	43 43	661 94
Nov. 10	324 35	396	21 38	345 73
Dec. 10	214 78	366	13 11	227 89
1878.				
Jan. 10	161 80	335	9 05	170 85
Feb. 11	96 74	302	4 88	101 62
Mar. 11	85 68	275	3 94	89 62
Apr. 10	70 00	245	2 86	72 86
" 12	116 29	243	4 69	121 98
Total				$7,049 38

Total, Dr.	$13,837 45
Total, Cr.	7,049 38
	$6,788 07

116 *Recapitulation.*

Date.	Total Sales.	Discount, 10 per ct.	Royalty, 7 per ct.	Interest.	Days.	Total.
1874.	Harding fee.					
Sept. 15	$162 50			$41 90	1,547	$204 40
" 30	150 00	$135 00	$9 45	2 41	1,532	11 86
Oct. 31	1,183 00	1,064 70	74 55	18 76	1,501	93 31
Nov. 30	1,619 00	1,457 10	101 99	25 00	1,471	126 99
Dec. 31	1,330 00	1,197 00	83 79	20 16	1,440	103 95
1875.						
Jan. 31	1,590 00	1,431 00	100 17	23 48	1,409	123 65
Feb. 28	1,450 00	1,305 00	91 35	20 94	1,381	112 29
Mar. 31	2,845 50	2,560 95	179 26	29 88	1,350	209 14
Apr. 30	3,386 50	3,047 85	213 35	48 52	1,320	261 87
May 31	2,536 00	2,282 40	159 77	34 37	1,289	194 14
June 30	1,877 01	1,689 31	118 35	24 76	1,259	143 11
July 31	679 50	611 55	42 80	8 80	1,228	51 60
Aug. 31	1,818 50	1,636 65	114 56	22 94	1,197	137 50
Sept. 30	5,340 60	4,806 54	336 45	65 35	1,167	401 80
Oct. 31	2,910 95	2,619 86	183 39	34 64	1,136	218 03
Nov. 30	3,820 30	3,438 27	240 67	44 42	1,106	285 09
Dec. 14	Royalty, 25 00			4 55	1,092	29 55
" 31	4,466 50	4,019 85	281 38	50 34	1,075	331 72
1876.						
Jan. 31	1,953 50	1,758 15	123 07	21 40	1,044	144 77
Feb. 28	2,160 00	1,944 00	136 08	23 00	1,015	159 08
Mar. 31	4,265 67	3,839 11	268 73	44 11	984	312 84
Apr. 30	5,192 18	4,672 97	327 10	51 99	954	379 09
May 16	Carpet, 65 80			10 12	938	75 92
" 31	4,522 98	4,070 69	284 94	43 84	923	328 78
June 30	4,146 00	3,731 40	261 19	38 84	893	300 03
July 31	2,687 50	2,418 75	169 31	27 61	862	196 92
Aug. 31	3,810 68	3,429 62	240 07	33 24	831	273 31
Sept. 30	8,094 50	7,285 05	509 95	68 08	801	578 03
Oct. 31	10,083 00	9,074 70	635 22	81 49	770	716 71
Nov. 30	5,949 25	5,354 33	374 80	46 12	740	420 92
Dec. 31	4,111 00	3,699 90	258 99	30 60	709	289 59
1877.						
Jan. 31	1,043 50	939 15	65 74	7 46	678	73 20
Feb. 28	2,438 79	2,194 92	153 64	16 70	651	170 34
Mar. 31	2,389 50	2,150 55	150 53	15 60	620	166 13
Apr. 30	6,049 20	5,444 28	381 09	37 46	590	418 55
May 31	2,852 50	2,567 25	179 70	16 77	559	196 47
June 30	2,665 65	2,399 09	167 93	14 83	529	182 76
July 31	2,407 00	2,166 30	151 64	12 61	498	164 25
Aug. 31	3,425 00	3,082 50	215 77	16 81	467	232 58
Sept. 30	10,480 76	9,432 63	660 28	48 07	437	708 35
Oct. 31	7,919 10	7,127 19	498 90	33 79	406	532 69
Nov. 30	5,298 61	4,768 75	333 81	20 93	376	354 74
Dec. 31	3,511 25	3,160 13	221 20	12 70	345	233 90
1878.						
Jan. 31	2,405 53	2,164 98	151 54	7 93	313	159 47
Feb. 28	2,997 20	2,697 48	188 82	9 00	286	197 82
Mar. 31	3,723 10	3,350 79	234 55	9 98	255	244 53
Apr. 30	5,369 30	4,832 37	338 26	12 67	225	350 93
May 31	5,961 90	5,365 72	375 60	12 17	194	387 77
June 30	2,219 75	1,997 78	139 84	3 83	164	143 67
July 31	2,108 49	1,897 65	132 83	2 78	133	135 61
Aug. 31	4,528 30	4,075 47	285 28	4 84	102	290 12
Sept. 30	5,904 70	5,314 23	371 99	4 46	72	376 45
Oct. 31	9,132 65	8,219 39	575 35	3 93	41	579 28
Nov. 30	5,099 38	4,589 45	321 26	59	11	321 85
Total						$13,837 45

117 *Exceptions of Defendants to the* the *Report of the Master, C. Stuart Patterson, Esq.*

In the Court of Common Pleas, No. 4. Sept. Term, 1878.

EVERITT *vs.* HALE *et al.* } No. 564.

I. Mode of accounting.

1. The learned master erred in finding (page 6) that there has been no such statement or settlement of accounts between the plaintiff and defendants as would be conclusive against the former and a bar to further accounting.

2. In charging (page 9) the defendants with royalty upon the aggregate of sales at the rate of ten per cent. discount from the retail price, instead of charging at the rate of thirty-three per cent. discount, which was the net wholesale approximate rate or price upon which the plaintiff's royalty was to be calculated.

3. In charging (page 9) the defendants with royalty upon prices received, where the sales stated by the master to have been upon a wholesale basis were in fact not upon such basis, the wholesale basis being shown by the testimony to be at the rate of an average of thirty-three per cent. discount.

4. In stating (page 9) that O. D. Roberts admitted that all sales to furniture dealers were wholesale sales, whether one or more articles were sold at a time, when Mr. Roberts testified (page —) that he used the word "wholesale" only to distinguish between sales to dealers and those to private parties, and without reference to the number of articles sold.

5. In charging defendants for all articles sold to dealers as wholesale sales, although but a single article was sold, in face of the testimony of Mr. Hoffman, plaintiff's own witness, that the only wholesale sales made were to the branch store and the agencies. (See testimony.)

6. In stating (page —) that the defendants based their claim to deduct thirty-three and one-third per cent. "upon their practice in billing goods to their branch stores at that discount," when the evidence shows and the master finds (pages 12, 13) that they had but one branch store, viz., in New York, and agencies in other places.

7. In finding (page —) that Exhibits 9 and 29 put the matter of the rate of discount beyond question, as these exhibits applied only to the time of their issue and to the sales in this city.

8. In stating (page 24) that "the plaintiff was not permitted at any time to have access to the defendants' books of original entry," when he himself testified that upon only one occasion did he ask to see the other books, and there was abundant testimony that afterwards the books were offered to him for his inspection.

9. In stating (page 24) the defendants' method of keeping their accounts relating to this branch of their business in a separate book (No. 10), in such a way as to imply that it was with a dishonest pur-

pose, and omitting to state that the plan was proposed and submitted to the plaintiff and assented to by him, and that even he did not testify that he ever objected to it.

10. In stating that the defendants' copies into this book (No. 10), "from time to time, were such entries from their books of original entry as, in their opinion, the plaintiff was entitled to see," as there is no testimony in the case to warrant such a statement.

118 11. In the manner of stating (page 12) that "defendants' several accounts (Exhibits 1, 2, 3, 4, Exhibit 10, and the exhibit annexed to the answer) differ from each other, and from the plaintiff's claim," whereas (see pages 6 and 7) the first four exhibits mentioned profess to be different forms of stating their account, as does the exhibit annexed to their answers.

12. In stating the account (page 14) upon the theory that the items of Exhibits 1, 2, 3, 4, and 10 constitute admissions by and against the interest of the defendants, instead of taking all the items from the books of the defendants.

13. In stating (page 15) that the defendants have "systematically confused the record of their sales under the contract so as to unlawfully increase their profits and diminish the plaintiff's royalty, and have * * * persistently understated the actual prices realized from their sales, and have omitted some sales," and implying that books kept for plaintiff's inspection were dishonestly kept.

14. In annexing (page 55) an account, marked "Exhibit A," and stating that the balance therein found against the defendants is a true and correct one, and also in stating that the annexed account, marked "Exhibit B," is a true and accurate statement of the several monthly totals of royalty due to the plaintiff.

15. In not reporting that the balance due by the defendants to the plaintiff on account of royalty amounted to only — dollars.

16. In reporting in annexed account, "Exhibit A," that defendants are bound to pay royalties on all the items marked as incorrect in the corrected copy of said exhibit annexed to these exceptions, whereas the books and testimony show that defendants are not bound so to do.

17. In not having stricken out in said annexed account, "Exhibit A," all items marked incorrect in the copy thereof annexed to these exceptions, and all charges against defendants where sales did not actually take place, or were afterwards rescinded, as shown in the said copy annexed hereto.

18. In finding (page 24) that the defendants made a uniform and unauthorized deduction, by way of discount, from the wholesale prices actually received by them, and implying that defendants thereby acted in bad faith, whereas such deduction is the very question in dispute.

II. Charges for springs, ornaments, and other matters.

19. In allowing the plaintiff royalty upon the prices of springs sold with the bedsteads, and finding that such springs, as a matter of fact, were an essential part of the bedstead, whereas the testimony shows that such allowance should not have been made.

20. In holding (page 10) that the defendants are bound to account for prices received by them for beds specially ornamented with mirrors, ebony strips, &c., whereas no such arrangement was contemplated by the parties in their agreement.

21. In disallowing (page 11) the claim of the defendants to charge the plaintiff with $162.50 for fees paid in August, 1874, to Messrs. Collier, Harding, and H. M. Beadle & Co. for opinions upon the Everitt patent, whereas the plaintiff was bound by article 4 of his contract to defray one-half of the expenses of any suits at law or in equity, &c.

22. In refusing to charge (page 11) plaintiff with the disbursements in regard to the Centennial Exhibition, amounting to fifty-eight dollars and fifty cents.

119 23. In finding (page 25) that the defendants persistently violated the article of their agreement in the matter of advertising bedsteads made under the plaintiff's patent on the various occasions therein stated by the master, and in holding (page 26) that this matter was relevant and material to this controversy.

III. Invalidity of Everitt's patent and right of defendants to buy in Stark's patent.

24. In holding (page 20) that the form of the interlocutory decree under which the reference to him as master was made precluded the defendants from setting up the invalidity of the contract between them and the plaintiff, resulting from fraudulent concealment and misrepresentation on his part and from failure of consideration.

25. In holding (page 20) that the granting of the Everitt patent was *prima facie* evidence of the novelty and usefulness of the invention, and refusing to permit the defendants to show that the said patent was invalid and worthless as the subject of contract, by reason of being an infringement upon a prior existing patent.

26. In holding (page 20) that the prior rejection of the plaintiff's patent, by reason of its being an infringement of the Stark patent, cannot affect its validity as subsequently granted, in this proceeding.

27. In not finding as a fact that the existence of the Stark patent was not discovered by the defendants until February, 1877, three years after the date of the contract between these parties, and after that contract had been recorded.

28. In stating (page 26) that "as the sales of the bedsteads increased, and the amount of the plaintiff's royalty grew in like proportion, the defendants seem to have formed a purpose to compel his reduction and ultimate relinquishment of even the unfairly diminished royalty which they then allowed him."

29. In holding (page 27) that the witness, Mr. D. P. Holloway, was compelled to produce in the face of defendant's objection, at the call of the plaintiff, the letters between defendants and D. R. Mason, Esq., these letters being privileged communications between attorney and client.

30. In finding as a fact (page 29) that the defendants bought the

Stark patent, not for the purpose of protecting the Everitt patent against a possible suit for infringement, but for the purpose of so using the Stark patent as to defeat the plaintiff's claim for royalty, whereas the testimony shows the contrary.

31. In holding (page 34) that whether or not the specifications for the reissue of Stark patent do or do not cover the Everett patent is immaterial to this case.

32. In not referring to the fact that the defendants had purchased the Maine patent as well as the Stark, for the purpose of protecting themselves and their business.

33. In not finding that the sum of $30,000 mentioned referred only to the Maine patent, and not to the Stark patent at all, and was then only mentioned in a speculative way as a price the owners would probably ask for that patent.

4. In finding (page 47) that the plaintiff was not informed of Stark's presence in Philadelphia, nor of the origin of the negotiatiations between Stark and the defendants with reference to a purchase of the Stark patent.

120 35. In stating (page 47) that the defendants' answer, referring to the purchase of the Stark patent, is false.

36. In reporting (page 49) that the defendants could not equitably purchase the Stark patent.

37. In holding (page 48) that the plaintiff and defendants occupied such a relation towards each other as to preclude the latter from obtaining any advantage from a patent such as the Stark patent (which was not merely an improvement on the Everett patent, nor subsidiary to the same, but prior and adverse thereto) and holding it adversely to the Everett patent, whereas the evidence shows that the Everitt patent, being an infringement of the Stark patent, the defendants were entitled to buy in the Stark patent for their own protection.

IV. Assignment of patents.

38. In not reporting that a reassignment of his patent was tendered to the plaintiff by the defendant on November 22d, 1878.

39. In reporting (page 45) that under the terms of their contract the defendants should assign to the plaintiff letters patent No. 159,908, granted February 16th, 1875, to H. W. Curtis; No. 181,450, granted August 22d, 1876, to C. Kilburn; No. 210,777, granted December 10th, 1878, to Henry S. Hale.

40. In reporting (page 45) that defendants should assign to plaintiff letters patent No. 182,465, granted September, 1876, to S. D. Newcomb.

41. In reporting (page 51) that defendants should assign to the plaintiff the Stark patent, and all their rights thereunder, and holding (page 34) that whether or not the specifications upon which this patent was reissued do or do not cover the Everett patent is immaterial to this case.

42. In sustaining the second praper of the plaintiff's bill.

43. In reporting (page 55) that the defendants should pay the costs of this suit.

GEORGE BIDDLE,
JAMES OTTERSON,
GEORGE W. BIDDLE,
For Defendants.

121 *Supplemental Report of C. Stuart Patterson, Master, upon the Exceptions filed by the Defendants.*

C. P., No. 4. S., 1878.

EVERETT *vs.* HALE. } No. 564.

A printed copy of the report, not including the account ("Exhibit A"), was sent to the counsel on twenty-fourth December, 1880. On fifth February, 1881, the master notified the counsel that his report would be filed on twenty-first February, and that in the meantime it, with its exhibits, including the account, could be examined at his office. An order of court having been made giving the defendants further time in which to file exceptions to the report, they, on fifth March, 1881, filed with the master the forty-three printed exceptions and the very large number of specifications of errors in the account, all of which exceptions and specifications of errors are filed herewith.

The learned counsel for the defendants having asked to be heard in support of their exceptions, the master held meetings on the 9th, 10th, and 11th of March, 1881, at which he was attended by W. P. Bowman, Esq., and E. C. Mitchell, Esq., for the plaintiff, and by Edward A. Ackley, Esq., J. Rodman Paul, Esq., George Biddle, Esq., James Otterson, Esq., and George W. Biddle, Esq., for the defendants, and also by the plaintiff, the defendant, H. S. Hale, and Mr. Roberts the defendants' book-keeper.

The master has had the benefit of an able argument by George W. Biddle, Esq., in support of the exceptions to the conclusions of law stated in the report, and in particular in regard to the 24th, 25th, and 41st exceptions.

The twenty-fifth exception is directed to the master's alleged error in holding "that the granting of the Everitt patent was *prima facie* evidence of the novelty and usefulness of the invention, and refusing to permit the defendants to show that the said patent was invalid and worthless as the subject of contract by reason of being an infringement upon a prior existing patent."

The master reports that this exception is not well founded in fact. The master did not refuse to permit the defendants to show that the plaintiff's patent was invalid and worthless by reason of being an infringement on a prior existing patent. The record does not show that the defendants made, nor that the master rejected, any such offer of proof. There is no evidence in the cause which would justify the master in finding that the plaintiff's patent infringed upon the

Stark patent as originally granted. The Patent Office examiner decided that it did not. Mr. Mason, the defendants' counsel, advised them that it did not, and the defendants having secretly bought the Stark patent proved their concurrence in that view by having that patent fraudulently reissued in such shape as apparently to cover the plaintiff's patent.

The master has found:

I. That the interlocutory decree having directed the defendants to account under the contract, it is not, at this stage of the cause, open to them to set up the alleged invalidity of the contract, or its want of consideration.

122 II. That a State court has not jurisdiction to determine as to the validity of a patent, nor to decide a question of infringement.

III. That the prior rejection of the plaintiff's patent cannot affect its validity as subsequently granted.

IV. That the plaintiff's patent did not infringe on the Stark patent as originally granted.

V. That the defendants cannot now be heard in the face of their declarations, as quoted upon pages 21 and 22 of the report, to object that the plaintiff's patent is lacking in utility and novelty.

VI. That the Stark patent was reissued as part of a fraudulent scheme, in order to cover the Everitt patent, and to constitute it an infringement of the Stark patent reissued, and that whether or not that purpose be accomplished, is immaterial in this case.

Mr. Biddle contended that the master was in error in holding that the interlocutory decree in this cause prevented the defendants from raising the question of the invalidity of the Everitt patent, and also in error in holding that a State court has not jurisdiction to determine as to the validity of a patent, nor to decide the question of infringement.

As to the first point, the master is of opinion that however competent it may be for the court to hold itself free, notwithstanding the interlocutory decree to consider the alleged failure of the consideration of the contract between the parties, it is not competent for the master, as its officer, appointed by that interlocutory decree, to regard as open a question which that decree concludes.

As to the second point, the precise question is whether a State court has jurisdiction to determine whether a patent infringes upon a subsequently reissued patent, the objection of infringement being set up by way of defence to a suit under a contract. The issue is not upon the validity of the patent, but is exclusively upon the question of infringement. It has been held that the issue of infringement, even when set up by way of defense, is not within the jurisdiction of a State court. Parkhurst *vs.* Kinsman, 2 Halst., Ch., 600.

That case and the doctrine asserted by it are cited and recognized by Sharswood, C. J., in Slemmer's Appeal, 8th P. F. Smith, 163.

The master, therefore, feels compelled to adhere, on these two points, to the views stated in his report. The question being one of

law, if error there be, the court, to whom this report is submitted, will correct it. But if the defence of infringement be not barred, either by the interlocutory decree or the want of jurisdiction in the court, it still remains to be said that a court of equity will not permit the defendants to take advantage of their own wrong by setting up as a defense to their liability under their contract with the plaintiff a technical invalidity in the plaintiff's patent which was the result solely of the defendants' fraud, and which was created by them long after the date of the contract, and for the very purpose of enabling them to avoid the fulfillment of their obligations under the coutract. Indeed, the Stark patent, as reissued at the defendants' instance, is open to a much graver objection than any which can be urged against the plaintiff's patent. Under the act of 1836, the Stark patent may at any time be repealed by *scire facias* at the suit of the United States, for the fraud to which it owes its reissue. Mowry *vs.* Whitney, 14 Wall., 434.

Mr. Biddle also contended that the master erred in reporting that the defendants should assign the Stark patent to the plaintiff.

123 As to this, the master can only say, that after a careful reconsideration of the case he feels compelled to adhere to the views stated in his report.

The master also had the benefit of a minute and searching criticism of his account ("Exhibit A"), which was very clearly and forcibly presented by Mr. Ackley, with the assistance of the defendant, H. S. Hale and Mr. Roberts, the defendants' book-keeper.

The defendants' books were produced before the master, and were referred to in support of the objections. The objections (which are written in red ink on the copy of "Exhibit A," filed herewith,) may be classified as follows:

I. That the master allowed the plaintiff royalty upon the springs sold with the bedsteads.

II. That the master allowed the plaintiff royalty upon bedsteads finished with mirrors and ebony stripes.

Upon these two points the master adheres to the views stated on page 10 of his report.

III. That some of the bedsteads charged against the defendants, though ordered, were not delivered nor paid for.

IV. That some bedsteads having been sold and delivered were afterwards returned by the purchasers.

V. That some bedsteads having been sold were afterwards, at the purchasers' request, exchanged for other bedsteads.

In each of these cases the evidence of the non-delivery, return, or exchange of the particular bedsteads were entries in the defendants' books. The master holds that the plaintiffs' right to royalty, under the terms of the contract, attached when each sale was made; and that no subsequent return or exchange of the article sold can be permitted to deprive the plaintiff of his royalty.

The master has given the defendants credit in "Exhibit C," hereto annexed, for each item in "Exhibit A," which they have shown not to have been delivered.

VI. That the master has in many instances charged the defendants twice over with the sales of the same articles by taking from different books entries relating to the same sale.

The master has, in "Exhibit C," credited the defendants with all the erroneous charges which were proved under this head.

VII. That the master has included in many items charges for boxing, or for work, or for articles of furniture not subject to royalty.

The master has carefully examined each of the items under this head. In each instance there was in the defendants' books a lumping charge, including the bedstead and the articles not subject to royalty. The burden of keeping the account being on the defendants, and there being no means of ascertaining the prices charged on the several articles, the master was compelled to charge the defendants with the lump sum.

VIII. That the master, in some items, has charged the defendants with royalty upon articles other than bedsteads.

The master charged the defendants (No. 72) with $30.00 for a plain bed sold to Mr. Thomas, the entry in the sales book appearing to so read, but the defendants have shown that the entry really was "3-in. pine board" sold to Mr. Thomas for 30 cents. The master has credited the defendants in "Exhibit C" for this error, and also for a crib which was not subject to royalty.

IX. That the master has charged the defendants with the
124 returns from the Boston store at list prices, and with the returns of the Baltimore store at net prices.

In each case the master charged the defendants with the actual prices appearing on the face of the returns; but it being admitted before the master, during the discussion of this objection, that the Baltimore agent deducted 33⅓ per cent. from each sale, without stating it on the face of the return, the master surcharges the defendants with royalty on that amount.

It must be added in justice to the defendants that they have with commendable frankness called the master's attention to five sales of bedsteads, and also to many sales of springs which had escaped his attention. The master charges them with royalty on those items.

The master annexes hereto an account ("Exhibit C,") showing the additional credits allowed to and charges made against the defendants. The balance of that account, $233.49, being deducted from $6,788.07, the balance as found by "Exhibit A" leaves $6,554.58, being the amount which, with interest from tenth December, 1878, the master finds is due from the defendants to the plaintiff. The master has inserted the last-mentioned amount in the first paragraph of the form of decree herewith submitted.

The master is of opinion that the defendants' exceptions, so far as they are not sustained by this supplemental report, are not well founded, and he respectfully submits them herewith for the consideration of the court.

C. STUART PATTERSON, *Master.*

125 EXHIBIT C.

Statement of additional credits and debits allowed and charged as the result of the revision of "Exhibit A," upon the hearing of the defendants' exceptions.

The defendants are to be credited with the amounts stated on the credit side, and debited with the amounts stated on the debit side, of this exhibit, and the balance, as appearing on this exhibit, is to be deducted from the balance found against the defendants in "Exhibit A."

Recapitulation.

"Exhibit A," balance against defendants	$6,788 07
Less "Exhibit C," balance against plaintiff	233 49
	$6,554 58

EXHIBIT C. CR.

58	Jan., '75	Error in mattrass	$5 00					
59	"	Duplicate of 102	240 00					
60	"	" 103	140 00					
61	"	Cornice	20 00					
68	"	Error in amount	10 00					
				$415 00	$373 50	$26 18	$6 11	$32 29
72	Feb., '75	Pine board	30 00	30 00	27 00	1 89	46	2 35
81	M'ch, '75	Duplicate of 94	120 50					
82	"	" 98	100 00					
104	"	" 62	57 50					
				278 00	250 20	17 50	4 05	21 55
112	April, '75	New York consignment	75 00					
114	"	" "	80 00					
115	"	" "	117 00					
141	"	" "	105 00					
142	"	" "	115 00					
				492 00	442 80	31 01	6 82	37 83
150	May, '75	" "	78 50					
151	"	" "	90 00					
126								
152	"	" "	65 00					
153	"	" "	80 00					
158	"	Duplicate of 146	130 00					
				443 50	399 15	27 93	6 01	33 94
186	July, '75	" 196	140 00					
187	"	" 197	50 00					
				190 00	171 00	11 97	2 46	14 43
209	Aug., '75	Not delivered	53 50	53 50	48 15	3 36	60	3 96
215	Sept., '75	Duplicate of 235½	40 00					
259		Mattrass	25 00					
				65 00	58 50	4 13	78	4 91
304	Nov., '75	Duplicate of 298	45 00	45 00	40 50	2 87	55	3 42
403	Jan., '76	Error in copying	55 00					
407	"	Mattrass	25 00					
				80 00	72 00	5 04	87	5 91
413	Feb., '76	Duplicate of 426	40 00					
429	"	" 417	200 00					
431	"	" 415	50 00					
				290 00	261 00	18 27	3 05	21 32
454	M'ch, '76	Duplicate of 468	68 50					
467		" 520	47 00					
469		" 454	65 00					
				180 50	162 45	11 34	1 80	13 14
516	April, '76	" 634	40 00	40 00	36 00	2 52	48	3 00
622	June, '76	Error in copying	30 00	30 00	27 00	1 89	30	2 19
708	Aug., '76	Duplicate of 853	189 00	189 00	170 10	11 90	1 66	13 56
728	Sept., '76	" 883	168 50					
794	"	Error in copying	100 00					
				268 50	241 65	16 94	2 27	19 21

Exhibit C, Cr.—Continued.

816	Oct., '76	Duplicate of 952	35 00					
859	"	" 718	90 00					
883	"	" 728	60 00					
				185 00	166 50	11 69	1 54	13 23
961	Nov., '76	" 900	45 00					
				45 00	40 50	2 87	37	3 24
127								
988	Dec., '76	Duplicate of 622	200 00					
989	"	" " 963	125 00					
				325 00	292 50	20 51	2 48	22 99
999	Jan., '77	" " 922	95 00					
				95 00	85 50	6 02	68	6 70
1021	Mch., '77	Error in Mattrass	10 00					
				10 00	9 00	63	07	70
1044	April, '77	Duplicate of 1138	110 00					
1088	"	Error in copying	100 00					
				210 00	189 00	13 23	1 28	14 51
1109	May, '77	Duplicate of 1139	42 50					
1114	"	Mattrass	25 00					
1137	"	Duplicate of 1115	35 00					
				102 50	92 25	6 44	56	7 00
1209	Aug., '77	Error	140 00					
				140 00	126 00	8 82	70	9 52
1243	Sept., '77	Duplicate of 1260	53 00					
1244	"	" " 1263	42 50					
1251	"	" " 1264	115 00					
1252	"	" " 1265	64 00					
				274 50	247 05	17 29	1 24	18 53
1456	Nov., '77	Mattrass	25 00					
1490	"	Duplicate of 1358	55 00					
				80 00	72 00	5 04	31	5 35
1498	Dec., '77	" " 1527	35 00					
1526	"	" " 1445	115 00					
				150 00	135 00	9 45	52	9 97
1531	Jan., '78	" " 1595	95 00					
				95 00	85 50	6 02	31	6 33
1577	Feb., '78	" " 1704	35 00					
				35 00	31 50	2 24	10	2 34
1636	Mch., '78	" " 1569	115 00					
				115 00	103 50	7 28	30	7 58
1715	May, '78	Error	30 00					
1774	"	Duplicate of 1664	75 00					
				105 00	94 50	6 65	23	6 88
1784	June, '78	Error	22 50					
				22 50	20 25	1 40	03	1 43
1853	Aug., '78	Error	49 50					
				49 50	44 55	3 15	05	3 20
2076	Oct., '78	Duplicate of 1896	70 00					
				70 00	63 00	4 41	03	4 44
128								
2091	Nov., '78	" " 2142	34 00					
2098	"	" " 1843	44 00					
2136	"	Mattrass	25 00					
2138	"	Duplicate of 2078	33 00					
2139	"	" " 1985	135 00					
				271 00	243 90	17 08	63	17 11
		Total						394 06

EXHIBIT C.—DR.

51	Dec., '74	Springs	$10 00					
				$10 00	$9 00	$0 63	$0 16	$0 78
132	April, '75	"	7 50					
135	"	"	10 00					
				17 50	15 75	1 12	22	1 34
147	May, '75	"	10 00					
				10 00	9 00	63	14	77
226	Sept., '75	"	5 00					
240	"	"	7 00					
247	"	"	10 00					
252	"	"	10 00					
262	"	"	10 00					
				42 00	37 80	2 66	58	3 24
271	Oct., '75	"	10 00					
278	"	"	10 00					
279	"	"	10 00					
281	"	"	10 00					
282	"	"	8 00					
283	"	"	10 00					
				58 00	52 20	3 64	76	4 40

Exhibit C, Dr.—Continued.

129								
397	Jan., '76	Springs	5 00					
406	"	"	10 00					
				15 00	13 50	98	17	1 15
484	M'ch, '76	"	5 00					
				5 00	4 50	35	07	42
499	April, '76	"	8 00					
				8 00	7 20	49	07	56
580	May, '76	"	10 00					
585	"	"	5 00					
592	"	"	5 00					
599	"	"	10 00					
				30 00	27 00	1 89	31	2 20
608	June, '76	"	5 50					
A 633	"	Beds and springs, S. B. C., 2, p. 169.						
B "	"	Beds and springs, S. B. C., 2, p. 169.						
C "	"	Beds and springs, S. B. C., 2, p. 169.	482 00					
D "	"	Beds and springs, S. B. C., 2, p. 169.						
E "	"	Beds and springs, S. B. C., 2, p. 169.						
631	"	Springs	5 00					
642 to 646	"	"	50 00					
				542 50	488 25	34 16	5 06	39 22
738	Sept., '76	"	10 00					
				10 00	9 00	63	11	74
755	Oct., '76	"	10 00					
820	"	"	10 00					
832	"	"	10 00					
834	"	"	10 00					
843	"	"	6 00					
883	"	Bed	175 00					
				221 00	198 90	13 93	1 80	15 73
896	Nov., '76	Springs	10 00					
				10 00	9 00	63	08	71
1006	Feb., '77	"	7 00					
				7 00	6 30	42	05	47
1025	M'ch, '77	"	10 00					
1038	"	"	5 00					
				15 00	13 50	98	10	1 08
1046	April, '77	"	5 00					
1098	"	"	10 00					
1099	"	"	10 00					
1100	"	"	10 00					
130								
1102	"	"	10 00					
1103	"	"	10 00					
1104	"	"	10 00					
				65 00	58 50	4 13	39	4 52
1113	May, '77	"	7 00					
				7 00	6 30	42	04	46
1161	June, '77	"	10 00					
				10 00	9 00	63	06	69
1188	July, '77	"	10 00					
1189	"	"	10 00					
1190	"	"	10 00					
1193	"	"	10 00					
				40 00	36 00	2 52	25	2 77
1213	Aug., '77	"	10 00					
1216	"	"	10 00					
1217	"	"	10 00					
1218	"	"	10 00					
1222	"	"	10 00					
1225	"	"	10 00					
1228	"	"	10 00					
				70 00	63 00	4 41	29	4 70
1284	Sept., '77	"	10 00					
1289	"	"	10 00					
1290	"	"	10 00					
1300	"	"	10 00					
1302	"	"	10 00					
1304	"	"	10 00					
1316	"	"	10 00					
				70 00	63 00	4 41	29 00	4 70
1370	Oct., '77	"	10 00					
1390	"	"	10 00					
1394	"	"	10 00					
1397	"	"	10 00					
1402	"	"	10 00					

Exhibit C, Dr.—Continued.

1405	Oct., '77	Springs	10 00					
1406	"	"	10 00					
1407	"	"	10 00					
				80 00	72 00	5 04	33	5 37
1467	Nov., '77		10 00					
1468	"		10 00					
1473	"		10 00					
131								
1475	"		10 00					
1476	"		10 00					
1477	"		10 00					
1478	"		10 00					
1492	"		10 00					
1493	"		10 00					
1494	"		10 00					
				100 00	90 00	6 30	38	6 68
1558	Jan., '78	Spring	10 00					
1559	"	"	10 00					
				20 00	18 00	1 26	05	1 31
1560	Feb., '78	"	10 00					
1561	"	"	10 00					
1562	"	"	10 00					
				30 00	27 00	1 89	09	1 98
1597	Mc'h, '78	"	10 00					
1598	"	"	10 00					
1629 to 1634		6 springs	60 00					
		Amount carried forward	80 00					
		Amount brought forward	80 00					
1634	M'ch, '78	Balto., 33⅓ per cent	35 00					
1630		" "	30 00					
1631		Balto., ⅓	35 00					
1632		"	26 67					
1633		"	16 67					
1634		"	16 67					
1635		"	10 00					
				250 01	225 01	15 75	68	16 43
1638	April, '78	Springs	10 00					
1642	"	"	10 00					
1700 and 1701			10 00					
1700		Balto., ⅓	20 00					
1701	April, '78		16 67					
				76 67	69 01	4 83	19	5 02
1766 to 1767	May, '78	Springs	20 00					
1765		Balto., ⅓	11 67					
132								
1766		"	26 67					
1767		"	16 67					
				75 01	67 51	4 76	16	4 92
1798	June, '78	Balto., ⅓	20 00					
"	"	Springs	10 00					
				30 00	27 00	189 00	05	1 94
1828	July, '78	"	10 00					
				10 00	9 00	63	01	64
1883	Aug., '78	Balto., ⅓	38 00					
1884		"	14 67					
				52 67	47 41	3 29	05	3 34
1902	Sept., '78	Springs	10 00					
1954	"		10 00					
1955		Balto., ⅓	42 00					
1956		"	10 00					
1957		"	11 67					
				83 67	75 31	5 25	06	5 31
2070 to 2075	Oct., '78	6 springs	60 00					
2070		Balto., ⅓	23 34					
2071		"	18 34					
2072		"	35 00					
2073		"	15 00					
2074		"	15 00					
				166 68	150 02	10 50	08	10 85

Exhibit C, Dr.—Continued.

2127	Nov., '78	Springs	5 50					
2132		Balto., 1/4	32 00					
2133		"	17 55					
2134		"	7 55					
2135		"	13 34					
2136		"	15 89					
2137		"	9 74					
				101 57	91 42	6 37	01	6 38
		Total						

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EXHIBIT C.

Recapitulation.

	Cr.	Dr.
1874, December		78
1875, January	$32 29	
" February	2 35	
" March	21 55	
" April	37 83	1 34
" May	33 94	77
" June		
" July	14 43	
" August	3 96	
" September	4 91	3 24
" October		4 40
" November	3 42	
" December		
1876, January	5 91	1 15
" February	21 32	
" March	13 14	42
" April	3 00	56
" May		2 20
" June	2 19	39 22
" July		
" August	13 56	
" September	19 21	74
" October	13 23	15 73
" November	3 24	71
" December	22 99	
1877, January	6 70	
" February		47
Amount carried forward	$279 17	$71 73
Amount brought forward	$279 17	$71 73
1887, March	70	1 08
" April	14 51	4 52
" May	7 00	46
" June		69
" July		2 77

Exhibit C—Continued.

	Cr.	Dr.
1877, August	9 52	4 72
" September	18 53	4 70
" October		5 37
" November	5 35	6 68
" December	9 97	
1878, January	6 33	1 31
" February	2 34	1 98
" March	7 58	16 43
" April		5 02
" May	6 88	4 92
" June	1 43	1 94
" July		64
" August	3 20	3 34
" September		5 31
" October	4 44	10 58
" November	17 11	6 38
Balance to Cr.		233 49
Total	$394 06	$394 06

Index.

134 Defts. Henry S. Hale, direct.
" " cross-exd.
Defts. Henry S. Hale, re-exd.
Defts., " recalled.
" " recross.
" " recalled.
" " recross.
Plffs., " recross.
Defts., Charles Howson, direct.
" " cross-exd.
" " re-exd.
" Henry Howson, direct.
" " cross-exd.
" Cheney Kilburn direct.
" " cross-exd.
" " re-exd.
" " recalled.
" " recross.
" " re-exd.
" " recross.
" James W. Fletcher, direct.
" J. Warren Hale, direct.
" " cross-exd.
" " re-exd.
" " recalled.

"	"	recross.
"	"	re-exd.
"	John L. Kite,	direct.
"	"	cross-exd.
"	R. M. Hunter,	direct.
"	"	cross-exd.
Defts.,	R. M. Hunter,	re-exd.
Plffs.,	Asher B. Stevens,	direct.
"	"	cross-exd.
"	"	re-exd.
"	Daniel Connolly,	direct.
"	"	cross-exd.
"	"	re-exd.
Defts.,	"	recalled.
"	"	recross.
"	Samuel N. Newcomb,	direct.
"	"	cross-exd.
"	Henry S. Folger,	direct.
"	"	cross-exd.
"	R. Mason,	direct.
"	"	cross-exd.
"	"	re-exd.
Plffs.,	Daniel W. McElroy,	direct.
"	"	cross-exd.
"	"	re-exd.
"	Nathaniel R. Harris,	direct.
"	Hugh McComb, Jr.,	direct.
"	"	cross-exd.
"	"	re-exd.
"	David P. Holloway,	direct.
"	"	re-exd.
"	"	recross.
"	"	re-exd.

135 *Testimony.*

C. P. No. 4. S. 1878.

EVERETT *vs.* HALE *et al.* } No. 564.

Meeting 18 Dec'r, (Wednesday, at 3 p. m.,) pursuant to notice.

Present: Messrs. Mitchell & Bowman, for plaintiffs; Mr. Otterson, for defendant.

Mr. Mitchell calls upon Mr. Otterson to produce books of Hale, Kilburn & Co., and of Hale & Kilburn Manufacturing Co'y since 16 April, 1874, and also all patents for improvements in manufacture of folding bedsteads granted to the defendants, or any one or more of them, since 16 April, 1874.

Mr. Otterson will produce them at the next meeting.

Adjourned to Thursday, 26 December, 1878, at 11 o'clock.

Meeting, Thursday, 26 December, 1878, at 11 a. m.
Present: Messrs. Bowman, Otterson and parties.

Mr. Otterson, in reply to the call made at the last meeting, produces—

1. Exhibit A. Letters patent No. 159,908, granted to Hale, Kilburn, Hale, Curtis, Kilburn & Hale for improvement in wardrobe bedsteads, dated February 16, 1875.

2. Exhibit B. Letters patent No. 181,450, granted to same parties for same subject, dated 22 Aug., 1876.

3. Exhibit C. Letters patent No. 182,465, granted to same for same subject, dated Sept. 19, 1876.

Mr. Bowman, for plaintiffs, offers said exhibits in evidence.

Mr. Otterson states that he is instructed that the above-mentioned are all the patents the defendants have for improvements in wardrobe bedsteads.

Adjourned to Thursday, 2nd January, 1879, at 11 a. m.

Meeting Thursday, 2nd January, 1879, at 11 a. m.
Present: The master and the plaintiff.

Adjourned because of the engagement in court of Messrs. Mitchell & Bowman to Thursday, 9 January, at 11, or if court engagements of master or council prevent a meeting at that hour to 3 p. m. of that day.

9 January, 1879, at 3.
Adjourned because of sickness of master.

16 January, 1879, at 3 p. m.
Present: Messrs. Bowman, Otterson, the master and parties.

The account as heretofore called for to be filed with the master before the next meeting.

Adjourned to Thursday, 23rd, at 3 p. m.

136 C. C. P. No. 4.

EVERITT *vs.* HALE.

No. 705 SANSOM ST., PHILA., 1, 18, '79.

C. Stuart Patterson, Esq., Master.

DR. SIR: As requested by yourself and plaintiff's counsel I submit herewith under their call, the accounts from the defendant's books.

These are as follows, viz:

No. 1. Is the account of sales by defendants of bedsteads they supposed they were making under the plaintiff's patent from September 4, 1874, down to and including October, 1878.

No. 2. Is an account of sales included in former accounts rendered to plaintiff in person, and upon which the defendants have paid royalty, as they claim, by mistake.

No. 3. Is an account of further sales made by defendants of the articles that claim to be exempt from any charge of royalty, but

which have not hitherto been accounted for except in their answer in this case.

No. 4. Is a statement of the payments to plaintiff made by defendant since the signing of the contract.

They ask that this paper be annexed to and made part of record.

Respectfully, OTTERSON.

Meeting Thursday, 23 January, 1879, at 3 p. m.

Present: Messrs. Otterson and Bowman and parties.

Mr. Otterson having produced the accounts which on 18 January, 1879, were filed with the master and sent by him to plaintiff's counsel, the plaintiff's counsel now call on defendants to produce the books showing all their accounts of sales and manufacture of the patented bedstead under the Everitt patent and improvements thereon, together with all their order books and other books which they may have in their possession; showing all their manufactures and sales of said patented articles.

Mr. Otterson replies that the books called for are in constant use, but defendants will produce them if plaintiff will pay the expense of their carriage.

Mr. Bowman replies that plaintiff protesting that he is not bound to pay that expense, will pay it, and calls.

The master directs the defendants to produce at the next meeting the original books of account, showing the sales of bedsteads and furniture manufactured by the defendants under the patent and improvements mentioned in the bill of the 16 April, 1874, and showing all moneys realized from the sale of the same.

Adjourned to meet on Wednesday, 29th January, at 3 p. m.

MONDAY, *January 29th*, 1879.

Present: James Otterson, Esq.

Mr. Owen D. Roberts, the defendant's accountant, is present and ready to make any explanation in reference to the accounts which have already been submitted on call, and produces here the books as required by the plaintiff's call and the master's order.

Owing to the absence of Mr. Bowman, plaintiff's counsel, the meeting is adjourned until Wednesday, February 5th, 1879, at 3 o'clock p. m.

WEDNESDAY, *February 5th*, 1879.

137 Present: W. P. Bowman, Esq., on behalf of E. E. Everitt, Esq., E. E. Everitt in person.

James Otterson, Esq., on behalf of Henry S. Hale *et al.* The def'ts and Henry S. Hale, Esq., in person.

Mr. OWEN D. DOBERTS sworn on behalf of the plaintiff.

I reside at 1240 South 5th st.; I am in the employ of the def'ts—The Hale, Kilburn Manufacturing Co'y; I have been in their service a few months over ten years; I was in their service at the time of entering into their agreement with Mr. Everitt in relation to his

patent, and have been continuously to the present time; I am their chief book-keeper; I have their books here in reference to their transactions with Mr. Everitt; I have all the books of original entry; I can refer you to the first one. (Book produced marked City Order Book, M.)

Q. Do the books which you have here contain the entries of all all orders received by the defendants for the Everitt bedstead and the improvements thereon, no matter from what part of the country received, and from foreign parts, and do they show the exact quantity of goods manufactured and sold under his patent and the improvements?

A. With the exception of the word manufactured, I will say yes. I mean to say that the books we have here only show the record of orders and sales.

Q. Where are the books which show the quantity manufactured?

A. They are at the office.

Q. Do the books which you have here show the prices received for the articles manufactured and sold under the Everitt patent and the improvements thereon?

A. Not strictly. The sales book, which is the book of charge in all cases except to retail parties, show bills subject to a cash discount, and the net amount received for the beds will not show except on the cash book. The cash books are not here.

Q. Then do I understand, Mr. Roberts, that by a reference to the books which you have here and the cash books to which you refer, you will be able to tell, without any other papers or documents, the exact amount of sales made by the defendants, of the Everitt bedstead and improvements thereon, and the prices and amounts received by the defendants?

A. Yes sir. My answer covers the whole time from the date of the agreement in plaintiffs' bill down to the present.

Mr. Roberts is requested to take up the first book and look over until he comes to the first order, and states that the only way he can do is to examine by order until he comes to the first bedstead. The only index in the book is the name of the purchaser and not of the article purchased.

When I come to an order it simply shows the amount of goods ordered. I have to refer to the sales book and cash books to ascertain the amount actually delivered and paid for. In order to ascertain the amount of goods delivered and paid for, I would have to refer to the cash and sales book at or about the date of the order in the order book. There is sufficient in the cash and sales book to identify the order in the order book. There were no sales and cash received nor orders given that were not entered in any of these books to my knowledge. If a bedstead were ordered and paid for at the time of ordering, it should be in the order book and cash book, but not in the sales book.

The following books were left in the custody and control of the master:

"Foreign order book, K,"	"	sales book,	R.
"City order book, L,"	"	"	S.
"City order book, M,"	"	"	T.
"Foreign order book, N,"	"	"	U.
"City order book, O,"	"	"	A.
"Foreign order book, P,"	"	"	A 1.
"City order book, Q,"	"	"	A 2.
"City order book, R,"	"	"	C.
"City order book, S,"	"	"	C 1.
	"	"	C 2.

138 "C. O. D. book" (so called), order books A, B, C, are produced, but defendants wanting them for current use are taken away by defendants.

Q. The defendants have branch stores, have they not?

A. Yes, sir; in different parts of the country. They have none in foreign countries. These books do not show the goods sold by the branch stores in different parts of the country. The cash books will show the amout of sales made by the branch establishments, not in detail, but *in toto*. They will show the amout of money received from the sale of the Everitt bedstead and improvements *in toto*, but not in detail. By the weekly returns of the branch establishments I can tell every dollar that is received by the sale of the Everitt bedstead and improvements made by the said branch establishments. These amounts are transferred to the cash books. I cannot tell without referring to the weekly statement what they are for. That can only be ascertained by referring to the weekly statements. The amounts are merely placed to the credit of the branch stores.

Mr. Bowman calls for the statements of defendants from their different branch establishments throughout the country, showing the amount of sales and cash received for the Everitt bedstead and improvements, to which Mr. Otterson replies that they will be produced at the next meeting.

Q. Do those statements show the amount of sales by the agents of the company; that is, travelling agents?

A. No, sir. The books which are here show that.

Q. Do these books show the amounts of sales by your agents in Chicago, Albany, &c., and other parts of the country?

A. They do not. They simply show the goods we furnished them and the prices, together with the amount of cash paid by them to the defendant; that is, these books with the cash books.

Q. Will these books, together with the cash books, show the cash received from every article connected with the patent and the improvements?

A. They will.

Defendant also produces on call the following books: "Cash book C," "cash book D," "cash book E," and "petty cash D."

Adjourned to meet Wednesday, February 12th, 1879.

WEDNESDAY, *February 19th*, 1879.

Present: Mr. Roberts, Mr. Bowman, Mr. Otterson, Mr. Everitt, Mr. H. S. Hale, Mr. Hoffman, the plaintiff's accountant.

Examination of Mr. ROBERTS continued by Mr. BOWMAN:

Sales book A 2 shown witness, and he is asked in what other book or books the accounts are carried forward to or re-entered in besides the one above referred to.

A. To the journal, and from thence to the ledger; neither of which books are as yet in the care of the master. I do not think that those books would facilitate the making up of the account in this matter. The same result with them could not be arrived at with less labor and a saving of time. I do not think that it is necessary to have those books in order in order to verify the account. (Mr. Otterson states that there is no objection to the plaintiff having them for the purpose of examination.) I do not think that we have any C. O. D. books after December 27, 1875. I looked for them in answer to your note, but was unable to find any. After that date the bills (C. O. D. ones) were copied in a regular sales book. I have the statements and accounts sent to the firm from other cities with me.

C. S. P. sales book A 2, page 300, shown witness.

And his attention is called to a note made up on one of the entries in 1877, referring to a C. O. D. book then in use by the defendant, and he is called upon to explain what that has reference to.

A. The C. O. D. book referred to there, as nearly as I can recollect, was a private memorandum book of the shipping clerk, in
139 which he kept a list of the C. O. D. bills sent out. The fact that the C. O. D. bills were copied in the regular sales book is proven by an entry immediately preceding the entry above referred to. The journal I have referred to is a regular journal, in which several classes of accounts are kept. It is not a general merchandise journal. It is only kept for special purposes. It is not a private journal. Entries are not made in it with reference to the sales of the Everitt bedstead; no original entry of any sales of the Everitt bedstead or the improvements are made in it. The journal has nothing to do with the manufacture or sale of Mr. Everitt's patented bedstead. They would not be of any use or benefit whatever in this investigation. No day-book in journal form is kept. I can tell by the cheque mark that the account has been transferred to the journal. Wherever this cheque mark does not appear the account has either been marked void or paid. There is no other mark than this cheque made to show that the account has been transferred. (Mr. Bowman calls for the weekly statements of accounts of sales returned by stores in other cities of the Everitt bedstead and the improvements. The same are produced by the defendants.) They are the original returns made by the stores outside of the city. They cover the time from May 8, 1875, to November 2, 1878. They do not show the sales made by the agents travelling through the country. The accounts of such sales would appear in the order books and sales

books which you have. These weekly statements do not appear in the sales or order books. These statements are the only record we have of sales made by outside establishments.

Sales book A I shown witness and his attention is called to an entry on page 86, and he is asked: I notice in an entry on page 86, being an account of a sale of a bed spring, &c., that you have your private mark, indicating, as you previously explained, the transfer of the account to the journal; will you be kind enough to state whether the private mark in this instance means that the account has been transferred to the journal?

A. It does. The entry there set forth relates to the sale of an Everitt bedstead. Wherever that entry or mark is seen with reference to the Everitt bedstead, it means that entry had been transferred to the journal. The journal does contain entries of the Everitt bedstead, but no original entries; I am positive as to that. Every entry appearing in the journal must first appear in the sales book, from which it is transcribed to the journal.

Mr. Bowman calls upon the defendants to produce all the receipts and receipt books showing receipts given by Mr. Everitt to the defendants for money paid by them to him for royalty, and also the book showing the account sales of his patented bedstead, in which they kept a separate account for his (the plaintiff's) inspection.

Mr. Otterson replies that the receipt books and receipts referred to will be produced, and of the books called for the plaintiff has been furnished with copies from month to month, and copies have also been furnished under call from the plaintiff in this proceeding. The originals will now be produced.

Q. Mr. Roberts, have you any books showing the amount or number of the Everitt bedsteads manufactured by the defendants?

A. I thidk we have.

Q. Where are those books?

A. Most of them in our office.

Q. What do you call them?

A. We have no special name for them. They are merely small blank books, in which the record of the piece-workers' time is kept. They do not show all the goods manufactured under the Everitt patent and the improvements. They do not show all, because for several months at the beginning of the manufacture of these bedsteads they were made by day work, and only a record of the men's time kept. With that exception they contain a record of all the articles manufactured under the above-mentioned patents and the improvements.

Adjourned to meet Wednesday, March 5th, 1879, at 3 o'clock p. m.

140 WEDNESDAY, *March 5th*, 1879.

Present: E. Coppee Mitchell, Esq., and W. P. Bowman, Esq., for the complainant; James H. Otterson, Esq., for the defendants.

E. E. Everitt, Esq., in person, and Hale, Esq., in person.

Plaintiff calls, through M. Mitchell, for city order-book, foreign order-book, and sales book, from August 1st, 1878, up to the present time.

Mr. Otterson replies that he declines to furnish accounts since the filing of this bill. We have already furnished every book that has been called for, with the exception of those and except some which are in constant use in the counting-room hourly. As to these latter the proposition was made to plaintiffs' counsel that it would be a convenience to us if their expert would examine them at the counting-house of the defendant; that every facility would be furnished them there for making the examination, and I understood that the offer had been accepted, and did not know until this minute that the examination had not been made.

The master is of opinion that under the decrees referring the cause to him it is his duty to take an account of all and every the bedsteads and furniture manufactured by the defendants under the patent and the improvements mentioned and referred to in the bill after 16th April, 1874, and of all moneys realized from the sale of the same, and he therefore directs the defendants to produce the books, if any, showing the moneys realized from the sales, if any, after 16th April, 1874, and down to the present time.

Adjourned to meet Thursday, March 18th, 1879, at 3 o'clock p. m.

THURSDAY, *March 13th*, 1879.

Present: E. Coppee Mitchell, Esq., W. P. Bowman, Esq., E. E. Everitt, Esq., James Otterson, Esq., Owen D. Roberts, Esq., H. S. Hale, Esq., and Mr. Hoffman, the defendants' accountant.

F. L. HOFFMAN sworn by examiner:

I live at 1721 Wellington street. I am a public accountant and collector. It is part of my business to state accounts from books and settle them. I have examined the books of the defendants, so far as they have been given to me.

Q. Did you have with you, in making that examination, statements furnished by the defendants in this case as their account, and marked Nos. 1, 2, 3, and 4?

A. I took those statements and examined them.

Mr. Otterson objects to the witness being interrupted at this point by the counsel until his answer is completed.

I found it utterly impracticable to cheque off the returns as therein stated in a satisfactory manner, or, in other words, lead me to further conclusion of which I had experience.

Q. Did you compare those statements with the books of the defendants?

A. I attempted to compare those statements, as I said before, but from the number of duplicates of each and every article as therein described, without the name of the purchaser being therein attached, I found it utterly impracticable to make any comparative test so far as a recapitulation of the whole amount, as would be required.

Q. Did you make out a statement of Mr. Everitt's account from the books of the defendant-?

A. I made out, so far as it was feasible, a verbatim copy of the goods entered in their order books and in their copied bill books, otherwise called sales books.

Q. Did the account so made out by you agree with the account made by them?

A. It does not in the slightest particular.

Q. Is your account correct as shown by the books of the defendant-?

A. My account is a verbatim copy from their books of original entry testified to as containing all the goods sold under the Everitt improvements and the patent.

141 Q. Do the books of the defendants show whether the goods manufactured under the Everitt patent and the improvements were sold wholesale or retail?

A. In a technical sense I can see nothing but by retail.

Q. Explain how these goods were sold by the defendants.

A. The goods sold in the city of Philadelphia are the customary retail sales to strangers, and there are also, or have been, numerous sales to the trade. I cannot call them wholesale, because they are single items. The goods sold out of the city are sold to special agents and to their own stores located in New York, Boston, and Baltimore. There were no wholesale sales except to their own stores. The copied bill book discloses the fact that they have taken off of the long price bills from 24⅓ to 33⅓ per cent. discount to their New York store; the Boston and Baltimore stores are not so much.

Q. Explain what you mean by the long prices.

A. The gross price, as shown by the copy of the bills in the bill book.

Q. Were any discounts taken off for goods sold to the trade, not their own stores?

A. There was; 10 per cent. was taken off.

Q. Was any discount taken off for cash paid on delivery of goods?

A. There was; in some instances from 10 to 20 per cent.; in others none.

Q. When did you find the first sales of these goods to have been made?

A. The first sale I have is Sept. 7th, 1874.

Q. From that time until the first day of January, A. D. 1879, what amount of these goods have been sold by the defendants, according to their books?

A. $209,097.30 worth of these gords.

Q. Up to what time do the accounts furnished by the defendants reach?

A. November 1st, 1878.

Q. What amount of goods is shown by their accounts to have been sold by them up to that time upon which royalty was due to Mr. Everitt?

A. $144,407.11.

Q. Can you say how much of these goods the defendants sold, according to the books, up to the 1st of November, 1878, the time at which their account stops?

A. $200,486.30. The difference between our account and theirs, up to November 1st, 1878, is $56,079.19.

Book produced by witness, and he says it is an accurate and verbatim copy of the entries in detail taken from the books furnished by the defendants, with the results calculated and ascertained by myself.

Messrs. Mitchell and Bowman, on behalf of the plaintiff, offer a statement of their account and claim book, marked Exhibit No. 5, so far as their claim appears on the books of the defendants.

Mr. Mitchell offers in evidence the following receipt and due-bill in the receipt book of the defendants, as follows:

Received, Phila., May 8th, 1878, of the Hale & Kilburn M'f'g Co. ($1,000) one thousand dollars in full consideration of assignment of patent, as per contract dated April, 1878.

ANDREW STARK.

Due-Bill.

PHILADELPHIA, *Feb. 23rd*, 1878.

Due Mr. Andrew Stark on demand eight hundred dollars ($800). xx–100.

HALE & KILBURN M'F'G CO.
H. S. HALE, *Treasurer.*

Endorsed: Rec'd, Feb. 26th, 1878, on within note seventy-five [dollars], $75.xx–100.

A. STARK.

141*a* Received Feb. 27th, 1878, seventy-five doll's ($75.00).

A. STARK.

Received March 8th, 1878, $100.
" " 13th, " $50.
" " 30th, " $50.
" April 12th, " $50.
" " 27th, " $25.
" May 3rd, " $50.

Adjourned to meet Thursday, March 20th, 1879.

THURSDAY, *March 20th*, 1879.

Present: E. Coppee Mitchell, Esq., James Otterson, Esq., Mr. E. E. Everitt, Mr. O. Roberts, the defendant's accountant, Mr. Hoffman; the plaintiff's accountant, W. P. Bowman, Esq.; H. S. Hale, Esq.

F. L. HOFFMAN, cross-examined by Mr. OTTERSON:

Q. Can you turn to the original entry in each case from which your account is made, in Exhibit 5, C. S. P., March 13th, 1879?

A. I can.

Q. Will you turn to city order-book L, page 628, and of the date of 27th October, 1874, and show the entry?

A. It is "1 crib mattress, $58;" in my account it is $58 inside, and carried out $50; the $8 being taken off for mattress.

Q. How is it that you took $8 off for the mattress?

A. By the printed list and by other entries in which the mattress is itemized.

Q. Do you mean to say that all the mattresses were $8 apiece?

A. No, sir.

Q. How did you get at the price of the mattress in that instance, not having the size or quality given?

A. Because, from all the investigations that I could make, $8 was the highest price paid for a crib mattress in 1874.

141*b* Q. The item on page 6 of your book, and also in foreign order-book "N," page 99, under date of December 23, 1874; what is that order?

A. 1 ¾ bedstead, new spring, $100; it has "plain veneered" there "underlined;" I do not know what that means.

Q. Does not that entry include the price of the spring?

A. I presume it does, if the entry here in foreign order book does.

Q. By what rule do you charge, in this account for the spring, when you are stating an account only in regard to bedsteads?

A. First, I had nothing to do but copy the goods as they appeared in the books of original entry; secondly, I was instructed by Mr. Everitt that the spring was as much a part of the bedstead as either the head or foot board, as patented.

Q. Then, you have uniformly, through your statement of account, as presented in this book, stated it so as to make the defendants answerable for the springs they have sold, as well as for the bedsteads; is not that so?

A. I have, from the fact that ⅘ths, at least, of the entries state one bedstead and spring for a round sum, not itemized.

Q. Sales-book T, page 61: "Bedstead with patent spring and mattress, $100;" by what rule do you include in that item the mattress as the springs?

A. Because it was impossible to discern by the entry whether it was an $8 husk mattress or a $35 hair mattress.

Q. Then, when you could not tell by the entry what part of the charge was for bedstead or springs or mattress you carried the whole to the defendant's debit; did you?

A. Not in all cases.

Q. What rule did you adopt to guide you in particular cases?

A. In the particular cases in which I was guided the bedstead was technically described, which left me the margin according to the price-list.

141*c* Q. Do you mean by that answer to imply that in most cases you were not guided at all?

A. No, sir. In a large number of cases I was guided.

Q. And in a lare number you were not. Is that it?

A. Yes, sir.

Q. I notice that in sales-book S, page 228, you have an item in

which you charge the defendants with "patent flexible springs," and in sales-book T, on pages 17, 55, and 69, the springs are excluded. Tell me by what rule you reach the different results in those cases.

A. On page 17 the spring is not excluded but deducted for a first-class mattress. In my practice, through the books where there was no other criterion to go by, I allowed the highest-priced mattress sooner than err on the other side by taking too little off.

Q. Then you have reached your results in a great many instances by estimates of values. Have you?

A. No, sir; I have their printed list price and there was no estimate about it.

Q. Then you assumed that the firm invariably sold at the printed list price and never above or below. Is that so?

A. No, sir; I did not assume it. I was compelled to be governed by the list price where the articles were uniformly bunched in the original entry.

Q. Was not that assuming that the particular sale was at list price?

A. It was, so far as the description of the article was made in the sale or bill.

Q. What had the description of the article to do with the subject except to guide you in your guessing?

A. Because its general description, when given, would not admit of guessing.

Q. If the list price of an article were $50, what was to prevent the firm from selling it at $45, if they choosed?

A. Nothing. They could sell it for $5 without the $40, except so far as related to their agreement.

141*d* Q. How did any agreement between Mr. Everitt and the defendants affect the defendant's rights to sell their mattresses?

A. I do not know of any.

Q. How do you know from the examination of the books whether the mattresses were sold at list price or less?

A. Because, as a general thing, they were itemized when above or below the price.

Q. How did you ascertain that?

A. By my practice through the books as well as referring to the list price, and as well as seeing the mattresses itemized and priced throughout the work.

Q. As the two items, one in foreign order-book K, page 630, and the other in sales-book S, page 32, the former bearing date Nov. 5th, and the latter Nov. 6th, of the same year, to the same parties, for the same article, at the same prices; whether it has not occurred to you that the entry in the sales-book is a memorandum of the delivery of the articles ordered per the order-book; and, if so, why the duplicate debit?

A. Because the entries do not agree, and I had no right to assume that they were one and the same thing.

Q. In what respect do they differ?

A. The order book says:

One patent folding bedstead	$150 00
One patent folding crib	60 00
One counterpane and one pair of sheets	6 50

Now the $31 and the $6.50 are entered $35.

In the sales book the entry is—

One patent folding bedstead	$150 00

Changed to $165, and one patent folding bedstead changed from $100 to $121.

One patent folding crib	$66 00
Two mattresses for bedsteads, $31 each	62 00
One crib mattress	6 40
One counterpane and sheet for bedstead	6 50
One counterpane, sheet, and pillow for crib	6 25

The entries do not agree, and there is no reference in the sales book to the order-book.

141*e* Q. But these differences you do not seem to have noticed in the statement contained in your book. In the order book you have charged—

Nov. 5th, 1874, one patent folding bedstead	$150 00
One patent folding bedstead and crib	60 00
Then page 631—one patent bedstead	100 00

While in the sales book of the next day you have noted a sale of—

Patent folding bedstead	$150 00
Do. do. do.	100 00
Do. do. crib	66 00

with some subordinate figuring. Why did you discover uniformity then and discrepancy now?

A. I do not do either now.

Adjourned to meet Wednesday, March 26th, 1879, at 10 o'clock.

WEDNESDAY, *March 26th*, 1879.

Present: James Otterson, Esq., H. S. Hale, Esq., F. L. Hoffman, Esq., E. E. Everitt, Esq., O. A. Roberts, Esq., and E. Coppee Mitchel, Esq.

Cross-examination of F. L. HOFFMAN, contined by Mr. OTTERSON:

Q. In making your account (Exhibit 5), what rule governs you in noting from the entries in the order book and in the sales book, or did you enter from both?

A. I did, at the beginning of the work. There was no connection, as is usually shown, in the margin of the sales book, *of* the folio of the order book as that of being one and the same entry.

Q. How far did you continue to do so?

A. Up to the latter part of 1876, and after that by simply comparing the two, and not entering both, knowing them to be one and the same thing.

Q. Do you think as an expert accountant that, under such circumstances, the account you have submitted (Exhibit No. 5), can be relied upon as accurate?

A. I do, so far as it was practicable with the materials I had to work with, and the general condition of the sales books as well as order books, up to nearly the close of 1876.

141*f* Q. Question repeated.

Mr. Mitchell objects, as the question has been fully and categorically answered.

A. I cannot answer the question in any other way.

Q. Do you think as an expert accountant that, under the circumcumstances, your account is accurate?

A. With the exception of the great probability of having missed a great many entries from the illegible condition of some of the pages of the sales books.

Mr. Otterson requests to have the answer read to him, and it is read.

Q. By Mr. MITCHELL: You think it is?

Answer by witness: Yes, sir; I think it is.

Mr. Otterson objects to Mr. Mitchell's interrugting the cross-examination or suggesting answers to the witness.

Q. Will you point to some of those illegible pages of the sales books to which you have referred?

A. Witness exhibits two entries from sales books and says, "Here is one and here is another," and asks if it is necessary to get more than two or three. I did not take many of these, Mr. Mitchell; that is, notes of places where the entries are illegible, but if I could take the time I could find a great many.

Mr. Otterson tells the witness that he need not look for any more.

Witness says that there are some instances where whole leaves are missing, and he is requested by Mr. Otterson to point these out.

A. Here is one (producing sales-book A; also marked letters.)

Q. Has this been in evidence before?

A. Yes, sir; it is part of the work. (Page 662 missing, and it is between the date December 21st, 1877, and December 22nd, 1877.) In sales-book C page 668 is missing, which is a part of the work of September 22nd. 1876.

Q. Are there any others?

A. I took no notes of no more missing leaves.

Q. Do I understand, then, that in your judgment the ac-

142 count you have rendered understates rather than overstates the amount of the defendant's liability.

A. I think that the probability is that it does understate rather than overstating.

Q. You think the duplicating of entries in your account which is brought about by including the items both from the order book and the sales book would not have the effect of making the account inaccurate?

A. I am not aware of any duplicates in my work.

Q. Did you not say that from September, 1876, to the latter part of 1876 your account included the entries both from the order book and sales book?

A. I did, where there was no evidence given, as is customary in all practical book-keeping, of the sales book being copied from the order book.

Q. Irrespective of the reason which you give for excusing yourself for doing it, is it your judgment that an account thus stated is accurate?

(Objected to by Mr. Mitchell, inasmuch as the witness has not admitted that he was wrong and has given no reason excusing himself.)

A. I believe I am perfectly justified in believing it to be so.

Re-examined:

By Mr. MITCHELL:

Q. Have you the printed price list of the defendants?

A. I have not; Mr. Everitt has it.

Q. Explain what you mean by the price list from which you obtained information.

A. It is a printed list or schedule of prices of certain articles, and sometimes of all the articles in that branch of business, for the use of the trade in general; to govern their sales.

Q. (Pamphlet shown witness.) Is this one of them?

A. Yes, sir; there are two here; that is one and this is another (designating, each separately, two pamphlets marked "No. 6, March 26th, 1879, R. A. W.," and "No. 7, March 26th, 1879, R. A. W."). These are discount sheets (two sheets produced by the witness and marked "No. 8, March 26th, 1879, R. A. W.," and "No. 9, March 26th, 1879, R. A. S."). No. 6, 7, 8, and 9 offered in evidence.

Q. In cases where you found from the books an entry consisting of several entries, one of which was an entry "Everett bed or crib" and the others of mattresses, or other goods, what did you put in your own account?

A. I was guided entirely by the price list; to some extent, I would say, by the price of the goods of the same number and description in other places of the books.

Q. You have misunderstood my question altogether. I mean to ask, Did you transfer to your own account anything, in such a case as that, except the Everett bed; did you include the mattress or other goods?

A. No, sir.

Q. I understand, then, that you transferred from the books into your own account only items of sales of the Everett bed or crib?

A. That is all—with the spring.

Q. Did you find in any case the spring charged separate from the bedstead in the books?

A. Not many.

Q. Did you include the spring in your account in those cases?

A. I did not.

Q. Then there is nothing in your books transferred from the books of the defendants except the Everitt bed and crib, in cases where the other goods were itemized and prices given for them separately?

A. No, sir; there is nothing else.

Q. Are there any cases in which you found upon the book a lump charge for a bedstead and crib and other goods, in which you carried into your account a less amount than the lump charge in their books?

A. Do I undersiand you to mean where the entry is lumped?

Q. Yes, sir.

A. In general items?

143 Q. Yes, sir; as for instance, if you should find an entry of "Everitt bedstead and mattress, $100," would you carry out the $100?

A. Yes, sir; but not the mattress. I would take off the mattress.

Q. In all those cases you took off the mattress?

A. Yes, sir.

Q. And in all these cases in which you carried the mattress out they were by mistake?

A. I do not know of any.

Q. Then you are not aware of any case in which you charged this firm with the mattresses they sold?

A. I am not aware of it.

Q. And even where the mattress was lumped with the bed in the book you endeavoured to distinguish, and took off the price of the mattress from the lump sum?

A. Yes, sir.

Q. Can you fix the period in these books when the order and sales books appear to have gone into the hands of Mr. Roberts?

A. No, sir; I cannot.

Q. Do you know his handwriting?

A. No, sir; I do not.

Q. I understand from what you said there was a time, about September, 1876, back of which the order and sales books are not well kept; can you fix that date?

A. All prior to that date I referred to.

Q. Can you fix the time exactly?

A. I cannot; in 1876—you mean when when it became regular?

Q. Yes, sir.

A. No, sir; I cannot fix the time. It did not come to a sudden termination as it were. It was gradual.

Q. They grew gradually better?

A. Yes, sir.

Q. Are all entries in the sales book and the entries in the order books records of the same transactions?

A. They appear to be, after the books became kept in a regular form; previous to that there was no way of my identifying them. It is customary that they should be so.

Q. Have you in your account, in any instance, charged the defendants with the same goods as having been sold by them twice?

A. I am not aware of having done so.

Q. Have you carefully avoided it?

A. I have tried to; I have two instances in which there is a slight evidence of that.

Q. Show it.

A. In the city order book, page 462, February 4th.

(Mr. Otterson objects to the witness reading his testimony from notes, and asks for the production of the book, that the witness may point out the entries of which he is speaking.)

Q. Refresh your memory by the memorandum which you have in your notes and inform the examiner of the instances you have mentioned.

(Objected to by Mr. Otterson.)

A. Order book Q, page 462, February 4th, 1875; and in order book R. Also letter P, page 31, February 3rd, shows the same entry of a bedstead sold to Kenyon.

Q. What did you do with regard to those entries?

A. I put but one entry. I had evidence that they were one and the same thing, without referring to the other.

(Mr. Mitchell offers in evidence two items mentioned by the witness as contained in the books referred to.)

Q. Is there anything in your account about royalty?

A. Yes, sir.

Q. Can you point it out; where is the account?

A. Sales book S, page 101, February 13th, 1875, "Pennsylvania Railroad, one set of castings and springs for patent folding bedstead, including royalty to use the same in car No. 50, fifty dollars." "Sales book B, page 224, December 14th, 1875, springs and fittings for one champion folding bedstead, including royalty, car No. 50, thirty-five dollars." "Sales book C, page 613, August the 3d, 1876, one set patent folding side rails to order, 6x3 long, ash, crib style, including royalty, $15.

144 ELISHA E. EVERETT, sworn and examined by Mr. MITCHELL:

Q. You are the plaintiff?

A. Yes, sir.

Q. State whether it is true, as averred in the answer, that there have been settlements of accounts between you and the defendants for the moneys due you under the agreement in suit.

A. There had been settlements, but not according to agreement.

Q. What sort of settlements are they? State the whole truth respecting the accounts furnished you and the settlements made.

A. I would go in there and they would tell me there was so much money due me, and I would receive it and give a receipt on account.

Q. Did you give a written receipt?

A. Yes, sir.

Mr. MITCHELL: I call for the production of the receipt signed by the plaintiff.

Q. How often were you paid for them?

A. Generally once a month, until January, 1877. Then, in the settlement of January 18th, 1877, they wanted me to give a receipt in full. I refused, as I had no statement of my account at all from the commencement to January, 1877. Mr. C. Kilburn, president of the company, Mr. Robert, Mr. Noblitt was present when I refused. They wanted me to take the money, but I went away without it, saying I had no statement of any of my accounts from the commencement up to that time. Mr. Roberts told me that I could go back of the receipt in full, also Mr. Kilburn and Mr. Noblitt. In the course of a few days——

[Q.] That is not material as it now stands. Is it true, as averred in the answer, that you have been refused access to the books of the defendants for the purpose of ascertaining how your accounts stood?

A. Yes, sir.

Q. It is stated here that you have not been refused access.

A. They did refuse me access, me and my accountant.

Q. When?

A. I have got the date at home; I think it is in July, 1877.

Q. Were you ever allowed to look at their books?

A. Never.

Q. What book did they show you when you went there?

A. A book they called my account book.

Q. Have you seen it here?

A. Yes, sir; believe it is.

Q. (Book produced.) Is that it?

A. I believe it is.

(Book offered in evidence by Mr. Mitchell, marked beginning on page 199, "No. 10, March 26th, 1879, R. A. W.")

Q. Do I understand you to say that that is the only book they ever showed you?

A. That is the only book, except the receipt book that I signed my receipts in.

Q. When was the last payment you received from the defendants?

A. In April, 1878.

Q. Are you sure about the month?

A. Yes, sir; I am pretty sure.

Q. I only ask because they begin their account which they attach to the answer, in July, 1878.

A. I received two payments that month. You will find part on

April 10th, and then you will find about April 13th the next, I think. April the 10th you will find the first.

Q. What reason was given, if any, by the defendants for not continuing the payments in the same way as they had been doing monthly?

A. I went in as I usually did; went to Mr. Robert's office, and I asked him if my account was ready, and Mr. Roberts gave to me the statement of what it was. With that, Mr. Kilburn was standing back of the office, and he spoke to me and told me the devil
145 was to pay now; says he, "Come in here;" he walks along and he carries me into the private office and there sat Mr. Henry Hale. Says he, "We got a letter this morning from a man by the name of Stark, who is about commencing suit against us," and says he, "He is going to stop us." I spoke to Mr. Hale and told him to show me the letter. Mr. Hale had it in his hands and showed it to me and I looked at it. I asked for the envelope on the letter; Mr. Kilburn looked around and he could not find it; Mr. Hale looked in the waste-basket and he found it. I read that letter and at the first glance at it—this was on the tenth day of April—I saw that the date of it had been changed from the 5th to the 10th, and that is why I asked for the envelope. Mr. Harry Hale gave it to me and I looked at the envelope, and I saw by the envelope that it had been received at the Philadelphia post office on the 6th, a. m. I remarked to Mr. Hale it was very strange that a letter should be dated in Washington on the 10th, which was received on the morning of the 6th in Philadelphia. Well, he made some reply——

Q. Come to the point.

A. And then, Mr. Kilburn and Mr. Hale sitting there, threw over my statement and, said I, "What are you going to do with that?" Mr. Hale remarked under the circumstances they thought they could not pay me. I told them I must have some money.

(Mr. Mitchell calls upon the defendants to produce that letter with the envelope.)

Well, they said under the circumstances that they did not know whether they could pay me or no, but Mr. Kilburn allowed I might have a little, and wanted to know how much I wanted. He told Mr. Hale that he might give me thirty dollars or forty dollars. Says I, "I must have 50 or 60 anyhow." So they gave me 60 dollars; I gave them a receipt for 70, which I had had 10 dollars previously. It went along a few days, two or three days, and I went in the private office and I says to Mr. Kilburn, "By what authority do you withhold my money? I want it." Well, he could not make any reply, but he said I could have my money. "Well," says I, "I wish you would tell Mr. Roberts to pay me, then;" so I went out and told Mr. Roberts, and when I came out of the office Mr. Roberts paid me. I told them at the time, or rather told them—yes, I told them at the time—that it was very strange a letter dated Washington the 10th should be received in Philadelphia before ten o'clock of the

6th, in the morning. I could not understand it. I knew that lawyers do not get to their offices as early as that in the morning.

Q. Proceed with the non-payment. What further reason, if any, did they give why they did not pay you?

A. Then Mr. Kilburn—I was in there off and on—seemed to or tried to make me believe he was about this Stark affair, and he told me that he would visit Washington and see about it. So the 10th of May came around. Another month's royalty was due. I went down for it as usual and I asked Mr. Roberts for my account. He told me that I would have to see some of the firm, or rather the officers of the company; so I waited some time. Mr. Hale came in—Mr. Harry Hale, and I asked him for my account and money; and he happened to be very busy, or at least told me he was, and had not time to attend to it, and that I could come in after dinner. I went in after dinner and he apparently had no desire to attend to me, and apparently tried to avoid me, and went off to the back part of the store. Finally I had to go and call him. He came forward and I asked him about my account. He said he could give me my account, which he did. I said, "How about the money?" He said "We can't pay you anything." Says he, "This Stark suit is hanging over our heads and we cannot give you any money." I demanded the money. I told him that I wanted my money, and that the money they held was not their['s] but mine; my share of the profits of it. He refused to pay me, and told me I would have to see Mr. Kilburn, the president of the company. So I jumps in a car and goes over to the exhibition, where I found Mr. Kilburn. They said he was there. I asked Mr. Kilburn why I could not have my money. Well, he said it was on account of Stark going to prosecute them; they was withholding my money to help pay the costs in a suit that they expected Stark to commence against them. I told him I had
146 nothing to do with Stark; that I wanted my money, and he talked awhile over the matter, and he said that he had seen Stark's agent, Mr. Mason, in Washington, and that he could make an arrangement with him by paying him five per cent. royalty for the use of his patent. He also said that he could buy it out and out, or, rather, Stark asked $30,000 for his patent. I told him I had nothing to do with Stark nor Stark's patent; that I wanted my money, as my agreement called for. He replied, and said he would be damned if he was going to pay Stark a royalty and me one, too; he would be damned if he was going to pay two royalties to anybody. Well, we had frequent meetings from that time, two or three times a week. Mr. Kilburn wanted me to pay Mr. Stark five per cent. of my seven for Stark's patent; then he could run them both together. I refused. Finally Mr. Kilburn told me that Mr. Stark's agent had told him that Stark would take four and one-half per cent., and he was satisfied that he would take four per cent. This must have been some time in the early part of June. Mr. Mason, Mr. Stark's so-called agent, was in Philadelphia, Mr. Kilburn told me. I told Mr. Kilburn that I would like to see Mr. Stark's agent. He said that he could make an arrangement for me with him. He saw him and told me Mr. Mason was willing to see me, and I told

him to make the appointment, and Mr. Kilburn made the appointment to meet at Mr. Mitchell's office for me to meet Mr. Mason, which we did. That must have been the early part of June—they refusing all the time to pay me my royalty which was due. Mr. Otterson was present; Mr. Hale, the treasurer; Mr. Kilburn, the president; Mr. R. Mason, of Washington, Mr. Stark's agent; Mr. Mitchell, Mr. Connolly, and myself; I think that is all. Mr. Mitchell advised Mr. Kilburn to pay me my money, which he refused to do. He had been advised, he said, not to do it. Mr. Otterson replied that he had advised Mr. Kilburn not to do so. Mr. Mason read over the reissued patent of Stark's to us. He was asked what royalty Mr. Stark would take for the use of his patent, and he replied five per cent. was what he was authorized to ask; and, after reading it over, he had but little to say, and left the balance of us there. I suppose I was in at the defendant's place of business two or three times a week, and most always would see Mr. Kilburn, and I would ask him how about my money and he would reply as quick as I settled with Stark he would pay me every dollar he owed me, but he would be damned if he was going to pay two royalties, one to me and one to Stark. The last time but two—there was two meetings afterwards with regard to the matter—I went in there and I met Mr. Kilburn, and we sat there talking over the matter, and he said that he thought he could arrange things, provided I gave Stark four per cent. of my seven. He said he was satisfied he could. I told him I would not talk of the matter, or intimated as much; that I wanted my money first, and then I could talk to him; that I wanted my share. With that Mr. Harry Hale came up and said, "What do you mean by your share?" Said I, "I mean my share of the profits of that bedstead." Well, he seemed to say that my bedstead was an infringement of Stark's; commenced telling me. * * * I told them they need not to tell me anything about it, that I knew just what it was about, and as for Stark, or Stark's agent, all of them put together could not scare me for five cents' worth; that I wanted my money. Harry Hale says, says he, "If you are a better man than we are you will get it." From that time to the 9th of July I did not say anything more about it. On the 9th the 60 days had expired, according to my agreement. I went in and told them that I was there through the advice of my counsel, and that I called for my money. Mr. Kilburn said I could not have it, and he would not pay it until I settled with Stark; as quick as I would settle with Stark he would pay me every cent that was due me. As that was the 9th of July, and I usually went on the 10th of the month for my money, I thought I had better go on the 10th; so I went in on the 10th and asked for my money. Mr. Kilburn told me, says he, "You can't have no money now; Stark has commenced a suit in the United States court against us." I told him let him crack his whip. He said that Harry had just gone down to Mr. Otterson's with the papers that had been served on them, and no doubt that my
147 counsel would hear of it very soon. I told Mr. Kilburn, as I was leaving, says I, "Now, Mr. Kilburn, any business between us now for the future you will have to do with my counsel,

and not with me." From that day to this we never said anything about Mr. Stark. Of course Mr. Mitchell received the papers and showed them to me, about Stark commencing an action in the United States district court.

By Mr. BOWMAN:

Q. When did you receive the last account from the defendants?

A. The last statement?

Q. Yes, sir.

A. For June. June's statement, 1878. I never received 12 monthly statements from July to July—July, 1877 to 1878.

Q. Please state how those statements were furnished, and what opportunities you had for ascertaining their correctness, and all about the manner in which accounts were kept?

A. I would go into the office and ask Mr. Roberts for my statement, and he would give it to me if it was ready, and I took that as the statement.

Q. Took what as the statement?

A. The statement they rendered; I can show you some of them if you desire to look at them.

Q. Produce them if you have them.

A. (Statements produced.) If I wanted to know anything I would have to go to this book (referring to No. 10); that is all the book I had, and it was very seldom that I ever looked at it, as I never had no settlement, and I thought my looking at it did not better the condition of things.

Q. These are some of the statements they furnished you?

A. Them is the whole twelve of them. Those statements I knew did not agree with the account rendered in this book (referring to No. 10,) or, rather, them statements did not agree with the goods I knew had been sold (statements offered in evidence by Mr. Bowman and marked No. 11, March 26th, 1879, R. A. W.). I do not think I ever looked at this book (referring to No. 10) more than four or five times together.

Q. Before you get off, state why you know that those statements do not agree with the amount of goods sold?

A. I do not pretend to say the amount, I mean the kind of goods, the articles that we sold. Do you want me to show some of them?

Q. Certainly; and state how you know that, and why you know it?

A. I know I received no account for No. 16 beds, and I know that No. 16 beds were sold. This book (referring to No. 10) I believe has some in it. My returns have none. My statements, those that I had, did not include any bottoms of the bedsteads, did not include any side racks to the bedstead, did not include bedsteads with looking-glass fronts; did not include bedsteads extra finish, ebony and gold, and I, of course, just thought it was not worth while to examine this book much. When this book was first started I went in there one day. Mr. Harry Hale said "Mr. Everitt, here is how we are going to keep your accounts," and he opened the book and showed me. Says I, "I suppose it is all right, I know nothing about

book-keeping." Says I, "After we get a going awhile I shall fetch in an accountant once in a while to look over my account." Well, he closed it and put it away, and that was all that was said about the books until I went over with my accountant to examine the books. I took the accountant in and introduced him to Mr. Kilburn in his private office, and stated to Mr. Kilburn that this gentleman was a competent man, and I had brought him there to look over my account on their books. "Well," he said, said he, "the books are all [in] use now." Said he, "what books do you want?" Said I, "We want to commence at the beginning, the time you commenced making the bedsteads, and bring them right down to the present." Said he "All right; come in in a day or two and you can look over your account." I told him "You set the day," which he did. We went there and Mr. Kilburn was not there. Mr. J. Warren Hale, the secretary of the company was there. I asked him if Mr. Kilburn spoke to him about our looking over the accounts, and he said "yes."

Said he "It is all right," and goes into the office and brings out
148 this book (indicating No. 10) and lays it down. Says he, "There's your account;" says I, "That is not my account. That is merely an account of bedsteads and not an account of manfacture there as you agreed to give me." "Well," he said, "that was all the account I would get," and he walked off and left me. He said if I wanted to get anything more I would have to wait until Mr. Kilburn came in. Finally, Mr. Kilburn came in, and I asked him about it. "Well," said he, "there is your account; all your account is in there." Said I, "It is not." Well, he argued and said it was. I told him it was not, and that I would have to look over their books. Well, he talked around, and said there was no use of looking at them, his book-keeper could swear to those. Said I, "I did not come here to get your book-keeper to swear to this book." He remarked, saying Mr. Roberts was a fair, square man, or something to that purpose. I told him that I always looked upon Mr. Roberts as a gentleman, and did not believe he would do anything wrong, but I did not come there to get Mr. Roberts to swear to that book; I came there to examine their books, of myself. Well, this was what kind of a time I had with them. I insisted upon having the books, and he would talk in a round-about way, and finally I had to come right square at him. Said I, "Mr. Kilburn, will you let me have your books?" Say yes or no, so that I will know what to do." Said he, "No." "Very well," says I, "that will do." So I went off. Why I wished to look at the account was this: I went in in July of that year, 1877, and Mr. Roberts told me that my account was so much. Mr. H. S. Hale looked over the account, and made it so much, and I thought it was very strange. There was another account. There was three different accounts made of the amount due me that month. I made up my mind I was going to know whether they were right or wrong, so I thought I would have to go over the books. Then, also, they refused me at the time to pay me for the No. 10 and No. 11 bed—what they called the No. 10 and 11—and I refused to accept my money without they did pay me, and then it ran on. They allowed I was getting too much royalty. I

felt as though I was not getting what I ought to have, and, finally, a friend of mine, and also of Mr. Kilburn's, met me in the street one day——

Q. Never mind what was done in the absence of the defendants. If anything was said in the presence of the defendants you can state it. If they were not present you cannot state it.

A. I went there sometime—it must have been in the latter part of July or sometime in Augu t, 1877, maybe—and took with me Mr. John Noblitt, who is a friend of Mr. Kilburn's, and also of mine. Mr. Noblitt and myself went there by appointment to talk over the matter and settle it between us—between the company and me. Mr. Kilburn allowed that if we would set down by ourselves and talk the matter over he thought it would be easily settled. I told him I would, with Mr. Noblitt present. Well, I went into the private office, and Mr. Kilburn allowed I was getting too much royalty, and he told Mr. Noblitt and myself, and went on to explain why and all about it, saying that this seven per cent. royalty was ruining the business. He wanted me to reduce that royalty to one-half what it was—three and a half per cent., and Mr. Noblitt was in favor of my making a reduction, but I refused to do so. We talked the matter a long while over there, and finally Mr. Kilburn said that I would ruin the thing if I did not make the reduction, and that they would stop making, or just make enough so as to hold the bed and keep others from making it; that they would take and put two or three in a store, and did not care whether they were sold or not—stick them in a back part of the store and no effort to sell it, if I did not come to his terms. Finally, I got warmed up a little, and I told him they could do just as he pleased, and all I wanted was exactly what my agreement called for. I wanted every penny that it called for, and not one cent more nor less. I didn't want anything off of him. Said I, "All I ask of you is to pay me what you agreed to do, nothing more or less." I told Mr. Kilburn, there, that when I signed that agreement I thought I was signing it with a set of men;
149 that there was six against one; six business men and one journeyman and workman; said I, not a set of babies. Well, he would be damned if he was going to pay it anyhow Said I, "All right." So the time ran along then till the 60 days had expired, and I went in again for my money. You see, they forfeited all right to the title at the expiration of the 60 days after payment. I went in then for my money, and would not take it without they paid me for the 10 and 11 beds. He refused.

Q. State right there, why he refused to pay for the 10 and 11 beds?

A. He said he thought he had not ought to; that I had no right to the royalty on the 10 and 11 beds. We talked some time over the matter; he told me he had consulted five of the best lawyers of the city, and they had all told him not to pay it. As I was going out of the door he came front with me, and he stated, "Now," says he, "you will go off down town, and get some petty lawyer," says he, "and take his advice, and you will get into a law suit, and it will neither benefit you nor me." So I went out, him saying if I went into a suit we would kill the bed and make it no use to him and no benefit to me.

"Very well," says I, "Mr. Kilburn, if I do, it will be you to blame and not me."

Q. And you did not get any settlement?

A. I got no settlement, and that was on the 10th of October, 1877, that this occurred, I think. So I went direct to Mr. Mitchell's office.

Q. Have you stated all the means you had of ascertaining the correctness of the defendant's accounts?

A. Yes, sir.

Q. And you never could get any examination of their books?

A. None, until I got them in this office. I did not finish what I was at, there——

Q. I beg pardon for interrupting you.

A. The next morning I received a note, through the mail from the firm, stating that I should come down and get my money, as it was too trifling a matter for us to fall out about, and that they would close out the stock of bedsteads on hand and do the next best thing. So I went down, and the first words Mr. Kilburn said to me was, if I had received a note. I told him I had. "Well," says he, "we will settle up with you, and we will make short work of this," or something to that effect; which they did. From that time until April, 1878, I got my money monthly, according to those statements (referring to No. 11).

Q. Did you ever have any account furnished you of the goods manufactured by the defendants, other than the book which you have referred to, and the monthly statements produced here.

A. That is all, except what is rendered here to the master.

Q. Did the defendants always deny you access to their books showing what goods they manufactured and sold under your patent and the improvements?

A. They did, this once, positively deny it, and said they would not allow any one to go through their books.

Q. Do you know, whether or not, the defendants sold any goods manufactured under your patent and improvements which they have not accounted for in their books?

A. I do.

Q. State all that you know upon that subject?

A. There is no number 16 accounted for me at all, and there is, I suppose, from one to three hundred of them made and sold, at a rough guess. There is no bedstead with looking-glass fronts accounted to me for. All bedsteads accounted to me for was counted without a spring, or spring bottom, except where there were slats in them, slat bottoms, and also a number of other beds. There is a crib—shall I pick out single ones?

Yes, sir; itemize wherever you can.

A. A crib, sold to an old friend of mine on Frankford Road, John Rose, 1804 Frankford Road (referring to sales-book B, page 228, one crib No. 1, veneered, $60; one mattress $8—$68). I do not think that they can show that to me in their accounts rendered to me. Now, there is another crib, sold February, 1878, with a mattress, for
$125. I never seen any account of that, and I have their
150 statements for that month, and I do not think there is a crib on there for over $55, and I know one was sold for $125, with

a mattress. I do not think there is any here in this account (referring to No. 10). There was a bed and bedstead sold July the 10th, 1878, for $425, according to their accounts. No return of that was made to me. The only account I got was their statements.

Q. You say the only account you got was their statement?

A. Yes, sir; and I find no account of that entry.

Q. In the monthly statement furnished you by the defendants did they make deductions on account of springs, or anything of that kind?

A. They said nothing about that. They kept them off entirely. They did not appear on my account.

Q. Were the springs a part of your patent, covered by your patent?

Objected to by Mr. Otterson.

Q. Did you present a model of your patented bed to these defendants at the time the agreements set forth in the bill entered into between you?

A. You will have to go back to 1873. In 1873 I made a rough model; then I made a model and sent it to the Patent Office; the third model that I made is here in the office, which was one which was sent to the firm. Then I made a large bed which is nearly the copy of the model I have here. The large one had a spring bottom in it; the small one had a slat bottom in it; and when the agreement was closed they were taken there as patterns for them to work by. Of course the bed was not complete without a bottom of some kind. I also took a drawing there and another model made in cottage shape; they called it a cottage bedstead; it is now in the patent office in Canada; and they had bottoms in; the bed was not complete without a bottom. The specifications in my patent call for either a spring bottom or a slat bottom.

Objected to by Mr. Otterson, as that is a matter of record.

Mr. Mitchell called upon the defendants to produce the patent mentioned, to which answer was made that the patent was in the hands of the prothonotary, as stated in the answer.

By Mr. Bowman:

Q. Did the defendants ever pay you any royalty on account of springs?

Objected to by Mr. Otterson.

A. They did, I believe; on the beds in 1874 they paid me on the bottoms, four months, not any since. I find in their account rendered to the master (objected to by Mr. Otterson) they charged me with 26 bed bottoms $99.00 and some cents, I believe it was. That was in the close of 1874. I never bought any bed bottoms of them, nor their books won't show it, and since then I do not think I have been paid—I don't think I have—for any bed bottoms; that is, the royalty on them.

Adjourned until to-morrow, Thursday, March 27th, 1879, at 10 a. m.

PHILADELPHIA, *March* 27, 1879.

Parties met at the office of the master.

Present: C. Stuart Patterson, Esq., E. Coppee Mitchell, Esq., W. P. Bowman, Esq., James G. Otterson, Esq., Mr. Hale, Mr. Brooks, and Mr. Everitt.

Examination of E. E. EVERITT resumed:

The WITNESS: I first ought to make a correction. In regard to the Rose crib on Frankford road, I got it mixed up with some other things, and I think I am mistaken in it; this is all of that.

By Mr. BOWMAN:

Q. Do you want to mention something else in connection with other cribs?

A. No. I wish to comence with the first I ever heard of Mr. Stark coming on Hale, Kilburn & Co. for an infringement of his patent. About the latter end of February or first of March, the fore part of March, 1878, I was in the store, 48 and 50 North 5th street, and Mr. J. Warren Hale called me into the private office and said there had been a man there from out west by the name of Stark, and
151 told them that they was infringing on his patent, that the Everitt patent was an infringement of his; that he was going down to Washington, and when he got back he would commence proceedings against them. Mr. Hale told me, I think, that he saw his model, and that he believed he was infringing on this Stark's patent. He seemed to talk in that way.

By Mr. OTTERSON:

Q. Are you quoting Mr. Hale's language when you say he seemed to talk in that way, or are you describing his manner?

A. He said he thought we were infringing on him. I said I didn't think we was. Well, he said we was. He seemed to believe what Mr. Stark had told him and what he had seen. I told him perhaps the day would come when he would have an opportunity to prove it before a court, and left him by saying I would be pleased to see Stark when he returned to Philadelphia. That is the first I ever heard of Stark's patent by the firm. Then, on the following 10th of April, when I went for my money, I received this notice through Hale and Kilburn of the reissued patent, and that he was about to commence proceedings against us for infringing his patent. I told Mr. Hale that he should preserve that letter of the 10th of April, also the envelope. The envelope was torn so that it required to be tied on to the letter. I told him to tie it on, and as I was about leaving the private office I told him to preserve it, as we might want it some day. A day or two afterward I went to get a copy of that letter. Mr. H. S. Hale told me he hadn't time to hunt it up, but he would get a copy of that letter. I went in again and he told me he had a copy of that letter made for me, and he had got John to copy it for me, and he handed a copy to me. It appeared to be the same—it might not have been word for word—but it was dated the 10th. I told Mr. Hale & Kilburn on the 10th of April, after reading this note, that that

notice amounted to nothing; that they should send and get a copy of Stark's reissued patent. At the time it appears the appropriation had run out at the Patent Office for printing purposes, and they could not print the copies of the patents as they were issued. So Mr. Stark's agent sent on a written copy, certified by the Commissioner of Patents, for the firm or company to look at. That must have been the latter part of April, 1878. I went in there and they showed it to me. I looked at it and I saw Roberts' name, Owen D. Roberts and John Kilburn on it as witnesses. I told them that that was not a legal patent; that the law required that all patents should be printed; then it went along a few weeks. I went into the office. They showed me a printed copy of Stark's reissued patent. Mr. Kilburn gave me one and said he had got about two dozen of them.

By Mr. MITCHELL:

Q. Have you that copy here?

A. Yes, sir; I have one copy.

Q. The one he gave you?

A. I suppose I have; but I do not suppose I can tell you which one it is. I can show you one exactly like it.

Q. If you can produce the one Mr. Kilburn gave you, produce it.

A. I know I have two or three, but I do not know which one it was. He told me that Stark's agent had given him two dozen, and he gave me one, and I think he said I could have some more if I wanted them.

By Mr. BOWMAN:

Q. Have you told us all that took place between you and the defendants, at any time, in referenre to this Stark patent?

A. I do not think I have told you all by any means.

Q. Then let us hear all that was said or done.

A. I was in there very frequently from the 10th of May until the 10th of July—I can say two or three times a week—and I always demanded my money. When I went into any conversation Mr. Kilburn always told me he would pay me every cent, if I would settle up with Stark. I insisted I had nothing to do with Mr. Stark, nor wouldn't have. I told him that Mr. Stark and me could not sail in the same boat, and that I wanted my royalty; and he would say he was not going to pay two royalties, one to Stark and one to me, 5 per cent. to Mr. Stark and 7 to me; he would be damned if he would. He told me that frequently.

152 Q. Previous to this had they stopped paying you a royalty on account of the suit brought by Stark?

A. They had stopped paying my royalty. Stark had not commenced the suit at the time. The suit was not commenced until the 8th day of July, 1878, and they withheld my money through the advice of their counsel. So they told me.

Q. Had they received any notice, or did they pretend to have received notice from Stark, in reference to it?

A. From Stark's agent, threatening or saying that they would commence the litigation if we did not do something.

Q. Go on and state all that was said at any time or place.

A. I insisted—there had been no litigation commenced—that they could not withhold my money; that as long as there had been no suit commenced I contended that they had not ought to withhold my money, and they said they would because the suit might come on and I would have no money, and they would hold it to pay my share. I asked them how they knew I would have no money. That, of course, they could not reply to, but they did withhold it in spite of me; might was right with those men.

Q. What next did you hear about this patent to Stark? State all you know about it, the knowledge you received, and how you got it.

A. We had frequent meetings. One day while in the store—it must have been in June—we were talking about it, and Mr. Kilburn told me that Stark's agent was in town; that he was up here at 9th and Walnut, at George Harding's office, taking evidence there. I told him I should like to see him. Well, he said I could go up and see him; so I went to see Mr. Stark's agent at Mr. Harding's office, and had about half an hour's conversation with him. He told me that Mr. Stark was willing that we should go on and make our bedstead, provided we would pay him 5 per cent.

Mr. MITCHELL: You need not tell anything unless the defendants or some of them were present.

Mr. OTTERSON: That objection does not come from me.

By Mr. MITCHELL:

Q. Go on, Mr. Everitt, and tell your story, until Mr. Otterson objects.

A. Mr. Kilburn, the president of the company, had told me, at two different times, that Mr. Stark asked $30,000 for his patent; and I told him I thought it was a good price for an old patent that only had about 4 years to run, and good for nothing at that. He replied, "Stark's patent was not worth a damned dollar, but we are infringing on it, I believe, and he has got us." I believe I have went over about all the things you have asked me. Of course I cannot think of everything that took place—there was so much with regard to Mr. Stark.

By Mr. BOWMAN:

Q. Have you told us when you received the first notice of any suit having been brought by Mr. Stark?

A. Yes, sir; on the 10th of July, 1878.

Q. From whom did you receive that notice?

A. A verbal notice from Cheeney Kilburn, the president of the company.

Q. What was it?

A. When I went in to demand my money he told me we had a job on hand, or something equivalent to that; that Stark had sued us and that Harry had gone to Mr. Otterson's office with the papers, and that no doubt my counsel would get notice of it sometime during the day.

Q. Then what did you do?

A. I told them to crack their whip and go ahead; that I didn't fear any of them, but I wanted my money.

Q. Did you have any more conversations with them at any time or place with reference to this suit?

A. I think not.

Q. Did you never meet them, or any of them, at Mr. Mitchell's office?

A. That was previous to the 10th of July.

153 Q. Have you told us what was said there with reference to this suit, by the defendants, or either of them?

[A.] Well, they came there, met there at Mr. Mitchell's office, and Mr. Mitchell asked Mr. Kilburn why he did not pay Everitt his money, and Mr. Kilburn replied that he withheld it by the advice of his counsel. Mr. Otterson spoke up and said he advised him to withhold the money, in anticipation of this suit coming on; that he withheld it for the purpose of defraying part of the expenses of the suit.

Q. What suit was that?

A. The Stark suit; that was before it commenced. Mr. Mitchell told him there had been no suit commenced, and, of course, he could not withhold my money, according to the agreement he had with me, and I suppose that Mr. Mitchell asked him——.

Q. Do not state suppositions; only what took place?

A. Mr. Mitchell asked him to give me my money 4 or 5 times, perhaps, then; and the last words Mr. Mitchell says to Mr. Kilburn, as he went out the door, was: "Mr. Kilburn, I hope you will send Mr. Everitt a note to come down and get his money to-morrow morning." Mr. Mason was there and read over Stark's reissued patent; stated that he believed in his mind that Everitt's was a clear infringement of it; that he did not want to go into any litigation, provided it could be settled without, and that he was authorized to take 5 per cent. royalty for the use of his patent, and we could go on and make the Everitt bedstead.

Q. Who was Mr. Mason?

A. R. Mason, of Washington, who said he was Mr. Stark's agent.

Q. Was he at Mr. Mitchell's office, and with whom?

A. Yes, sir; with Mr. Kilburn, Mr. Hale, and Connelly, myself, and Mr. Mitchell.

Q. Who did he come with?

A. I believe he came in alone, if I remember aright. I think Mr. Otterson and Mr. Hale and Mr. Kilburn came together. I think so. After Mr. Mason had got through reading the reissued patent he said that he believed he had done all that he had to do, and left before the rest of us.

Q. Is that all?

A. That is about all I can think of now.

Q. Do you know whether or not anything was said about the defendants owning the Stark patent at the time?

A. Yes, sir; I know either Mr. Mitchell or Mr. Connelly asked who was the owners of it, and he replied that it stood in Stark's name.

Q. Who replied?

A. Mr. Mason; that is, on the records in the Patent Office.

Q. Can you state whether the defendants, in making their monthly settlements with you, deducted anything for allowances made to the trade? If so, state what amount.

A. They made but one discount to me; that is, all alike; whether it was a retail customer or whether it was a wholesale customer, whether it was a furniture man, or whether it was a private citizen, agent, or their own stores.

Q. They made but one discount to you?

A. Yes, sir; that is, at a time.

Q. What do you mean by "at a time"?

A. Well, whenever they handed me a statement it was all just the discount taken off the statement. They changed their discounts at different times; sometimes they took off 20 and 5; sometimes 20.

Q. When you say they took off 20 and 5, do you mean 25?

A. No, sir; I mean 20 per cent., and then 5 off the balance; then they took 20, 10, and 5; then one-third off.

Q. How much is that?

A. Thirty-three and a third, as I understand it.

Q. Do you know what discount they allow to their agents and the trade?

A. I know some of the agents and some of the trade.

Q. State what you know, from your own knowledge, and from what the defendants have said to you?

A. From my own knowledge, to the trade of this city, all they allowed was ten per cent. off.

154 Q. Have the defendants said anything to you about the discount which they allowed to their agents and the trade generally?

A. I was a special agent for the sale of their goods myself; all they would allow me to take off to the trade was 10 per cent.; I did sell at 10 per cent. off the trade; I know they did the same thing.

Q. How long were you their agent for the sale of these goods?

A. One year; about one year.

Q. Were you at any time allowed to make greater deductions than 10 per cent.?

A. Not to the trade; they gave me strict orders not to the trade.

Q. Do you know whether their other agents were subject to the same orders?

A. I do not know; I judge they were.

Q. Was there any arrangement between you and the defendants as to the manner in which your patent was to be advertised and the name it was to bear?

A. There was.

By Mr. OTTERSON:

Q. Was not that in writing?

A. Yes, sir.

By Mr. BOWMAN:

Q. Will you state whether or not they kept their agreement in that respect?

A. It was to be called the Everitt bed; they did not keep their agreement in that respect.

Q. In what way did they fail to keep it?

A. I support in a dozen different ways.

Q. Specify a few.

A. In the first place, they advertised it as the Hale, Kilburn Co. parlor bed; the Hale and Kilburn folding bedstead and crib; I made complaints to the firm why they did not advertise my beds as they agreed to; Mr. Kilburn told me that it was overlooked; that it should be attended to, and referred me to Harry; I told him a number of times about it; finally, they *sticked* my name under some other, either the folding bed—they called it the Hale, Kilburn & Company's folding bed and crib, and they would put in small letters "The Everett Bedstead" — or the Champion folding bedstead and crib, with the name "Everitt Bedstead," and so small you could hardly see it with the naked eye.

Mr. OTTERSON: Those advertisements, I take it, are in print and can be produced.

By Mr. BOWMAN:

Q. Have you those advertisements in print?

A. Yes, sir.

Q. Produce them.

A. Here is one (produced) from the firm, February 7th, 1879; that I received from Mr. Roberts; I asked him for one while we were taking an account of the books.

Q. Who was Mr. Roberts?

A. He is principal book-keeper for the Hale, Kilburn Manufacturing Company; here is another (produced) from their agent in Chicago. (The first advertisement produced offered in evidence of Mr. Bowman, and marked "No. 12, March 27, 1879, R. A. W.")

Q. Were did you get this second pamphlet you produced?

A. A friend of mine got it from the Tobey furniture store in Chicago.

Q. Were you with your friend?

A. No, sir; it was sent to me by mail; there is the envelope. (Envelope produced.)

Q. Is your friend employed in the firm?

A. No, sir; he was a stranger to the firm.

Q. Have you others?

A. I have quite a number of others. Here is one more I should like to put in. (Advertisement produced, offered in evidence by Mr. Bowman, and marked "No. 13, March 27, 1879, R. A. W.")

155 Q. Do you know whether or not the Tobey Furniture Company are the agents of the defendants for the sale of your bedstead and improvements?

A. Nothing further than what the advertisement says, and what I understood generally, that they were the sole agents for Chicago.

Q. Can you state from that advertisement whether it had reference to your invention?

(Objected to by Mr. Otterson.)

A. It is called here the Everitt bed, in very small letters, and also has the date of my patent on it, 24th of March, 1874, and also the dates of the patents on the improvements obtained by the firm.

Q. What is the principal name given to it?

A. The Champion folding bedstead and crib; "Everitt Bedstead" in small letters underneath.

Q. Where did you get this from?

A. This is a circular I got off their stand at the permanent exhibition.

Q. Whose stand?

A. The Hale-Kilburn Manufacturing Company's stand at the exhibition September 14, 1877.

Q. Does it mention your patents and improvements in any way?

A. My name is under the Champion.

Q. Have you any other papers or pamphlets advertising your bedstead or improvements?

A. Yes, sir. ("Trade Bureau" produced.)

Q. Where did you get this paper from?

A. I got a number of those papers; I can't tell you exactly where I got that one from.

Q. Does it mention or publish your bedstead?

(Objected to by Mr. Otterson.)

A. Nothing more than giving the date of my original patent; my name is cut out entirely.

Q. Does it give any other dates?

A. Yes, sir; it gives dates of other patents.

Q. Of what other patents?

A. Patents for improvements; I do not recollect the dates now, but it will show us; at least I judge they are there, and mine takes the lead.

Q. Do you mean to say that it gives the dates of the original patent and the improvements thereon?

A. Yes, sir; March 24, 1874.

Q. In connection with whose advertisements are those facts published?

(Objected to by Mr. Otterson.)

A The Hale-Kilburn Manufacturing Company. That advertisement has been in every week for the last year or thereabouts in that paper.

(The copy of the "Trade Bureau" offered in evidence by Mr. Bowman, with special reference to page 20, and marked "No. 14, March 27th, 1879, R. A. W.")

Q. Have you any others?

A. Yes, sir; the American Cabinet Maker, Upholsterer, and Carpet Reporter, of Boston, March 15, 1879. There is an advertisement with no dates in the patent, and no "Everitt;" simply called the Champion folding bed.

Q. Whose advertisement is that?

A. Hale-Kilburn Manufacturing Company's, 48 and 50 North Fifth street, Philadelphia.

Q. How often have you seen that advertisement published in that journal?

A. I do not think more than twice; that is, in that shape; perhaps only twice. I think that is the only copy I got of it. I got a number of those advertisements.

Q. What advertisements?

A. Advertisements in different papers; some with the name on, some with the name not on; some with the name and date.

(American Cabinet Maker, Upholsterer, and Cabinet Reporter offered in evidence by Mr. Bowman, and marked "No. 15, March 27th, 1879, R. A. W.," with special reference to page 25.)

156 Q. What date do you mean—of the patent?

A. The date of the patent; but always my name has got one over it.

Q. How is the one over it; in large letters?

A. Large letters, and mine in very small letters.

Q. What names did you find given this patent by the advertisement of the defendants, generally?

A. Champion folding bedstead has been the name since about the commencement of 1875.

Q. The champion folding bed, since the commencement of 1875?

A. Since the commencement of that year; somewhere along there.

Q. Do you know, or did they ever give you, any reason for this change in the name?

A. Yes, sir. I spoke to Mr. H. S. Hale in regard to the matter, and he told me it was the champion bed and ought to be called that. I insisted upon having my name in their advertisements, cards, circulars, and so forth. When I started——

Q. Have you finished in this connection? You told us you insisted upon having your name published in their advertisements and circulars?

A. Yes, sir.

Q. Have you finished that; was there any other conversation on that subject?

A. Oh, we had a number of conversations in regard to the matter.

Q. Do you mean to say that you frequently called their attention to this?

A. Yes, sir; up to a certain time; and then I gave it up altogether, because I felt as though they would do as they pleased, anyhow, and all I could talk would not alter it any. This (paper pro-

duced) is a circular of my own that I had printed when I started the store on Second street. I headed the circular "The Everitt Folding Bedstead and Crib, or Champion." I wanted my name ahead. I thought I had a right to it.

Q. Did you show that to the defendants as a sample of what you wanted?

A. Yes; and I had cards got up for that purpose.

(The circular offered in evidence by Mr. Bowman, and marked "No. 16, March 27th, 1879, R. A. W.")

(Objected to by Mr. Otterson, because it is not shown that the defendants were connected with it at all.)

Q. Who had this circular published originally?

A. I had; when they seen it they sent me this note.

(Note produced.)

Q. I see that this circular is headed "Descriptive of the Everitt Folding Bedstead and Crib and Champion," and that the first word, "Everitt," is erased, and the word "champion" is written over it; and that the words "and champion" are erased, and the words "the Everitt bedstead" inserted; who erased those words there?

A. I do not know who done it; I think my printer, when he came to the store; I told him we would have to change it, and I think he done it so as to make an alteration in the circulars and cards.

Q. Where did you get that from?

A. I received it from my printer, Mr. Schale.

Q. Do I understand you to say that that circular shows the advertisement of your invention as it was made originally and agreed upon?

A. To a certain extent it does.

Q. Do I understand you to say that the defendants objected to that circular?

A. They did; I had the cards printed, and they got them with the same heading.

Q. Did they write you on the subject?

A. They did; yes sir.

(Letter shown witness.)

Q. Did you receive that from them?

A. Yes, sir.

(The letter with the envelope offered in evidence by Mr. Bowman, and marked "No. 17, March 27th, 1879, R. A. W.")

157 Q. Does this circular, marked No. 16, show by the erasures in ink how the defendants insisted upon having your bedstead advertised?

A. Yes, sir.

Q. I want to direct your attention to the improvements upon that bedstead.

A. I should like to say a little more on the advertisements. In all the most prominent advertisements my name does not appear.

Such, for instance, as the advertisement on the city hall fence, at Broad and Market, for that which has been there since the fore part of 1875.

Q. Whose advertisement is it?

A. Hale, Kilburn & Co.'s, or the Hale-Kilburn Manufacturing Company; those have been renewed within the last three weeks. Three figures of the bedstead are painted there on each of the four sides of the fence; and my name don't appear.

Mr. OTTERSON: I want to object to all this subject of inquiry as not being referred to in the bill.

The WITNESS: In their large banner, hanging over their store door, my name don't appear there at all, nor, in fact, in any of their principal signs on their store doors. In the Ledger, some three years ago, they had an advertisement there running for a long while, and my name did not appear in it. I went to Mr. Harry Hale, who had charge of the advertising at that time, and complained to him about my name not appearing there. He was in the office with his father at the time, and he said there was not room enough for it. I told him there was room enough for some other things there. Then he said: "Why do you want it there?" I said: "Simply because my agreement calls for it, and I insist upon it, and if you do not put it there you will be sorry for it some day," and I left him. I think that was the last occasion I ever spoke to him about it; but I spoke to Mr. Kilburn when they neglected from the store to advertise that bed as they agreed to, and he always shoved it off to somebody else. It was either Warren's fault or Mr. Roberts' fault, or some one of the firm, and he would refer me to somebody else, and I got but little satisfaction. I finally concluded they would do as they pleased, anyhow, and there was no use in my trying to keep them to their agreement.

Q. Is that all in relation to that?

A. I have got a number of the advertisements from the first store down to the present, where they have not used the name at all that they agreed, to published in New York and other offices, cards, circulars, newspapers, pamphlets, and a variety. All their wagons where they are advertising the champion folding bed my name don't appear; but they use that cut there; that design is their trade-mark now.

Q. What design have you reference to?

A. On the front page of circular No. 16, a bedstead in a half upright position; they make it one of the leading things in their advertisements; they use it on their letter headings, bills, and in a variety of ways, and call it their trade-mark. I had that design made. I got a drawing of it, with the figure of a lady putting it up, some months before they ever made a bedstead in their place. I will produce it if required.

Q. You have a model here, have you?

A. No; but I will produce a drawing I had made. That drawing is in my English, French, and Belgium patents. Would you like to see the drawing?

Q. Yes, sir.

A. (Drawing produced.) I showed this to the firm at the time I had it done.

Q. What is this paper?

A. I suppose it is a drawing of my bedstead, which they took for their trade-mark.

Q. Who do you mean by they?

A. Hale, Kilburn & Company, or the Hale-Kilburn Manufacturing Company. I joined them. (The drawing offered in evidence by Mr. Bowman, marked No. 18, March 27th, 1879, R. A. W.) They had not any bedstead made ready for same before September; this drawing was made in the spring before.

158 Q. About the improvements on this bedstead. I want you to state all you know about the improvements upon your original invention.

A. I know that any improvements that was to be made by either party, either them or me, was to be held subject to that agreement. If I made any improvements——

(Objected to by Mr. Otterson, because the agreement will speak for itself.)

Q. I do not want you to state what the agreement says with reference to the improvements; that will speak for itself; but I want you to state the improvements, if any were made, and what relation they had, if any, to your original invention.

(Objected to by Mr. Otterson, because the patents themselves, which have been called for, and which will be produced, will speak for themselves on that subject.)

A. The first improvement they got on my bed was the patent of Mr. Curtis; the improvement he claimed on—that is, the side rack and a little closet in front. Otherwise, he says in his patent, that it is an improvement on the Everitt bed. I think he gives the number of the patent and the date of the Everitt bed.

Q. Who is Mr. Curtis?

A. He was a member of the defendants' firm when I made that agreement with them. He is now dead.

Q. You have not stated what connection that improvement has to your patent, whether any or not?

A. He says here himself (patent produced) that it has.

(Mr. Otterson objects to the witness reading from the papers.)

Q. I want you to state yourself, of your own knowledge as an expert. While the patent would speak for itself, I want your knowledge as an expert whether that improvement has any relation whatever to your patent.

A. It undoubtedly has.

Q. Tell us in what way?

A. They had my bedstead, and without it they could not make a crib of it.

Q. As an expert, can you tell us whether it has any other relation to your patent as an improvement on it?

A. It has. He used the whole of my bedstead. He put on those side racks, which makes an improvement on my bed undoubtedly. The patent will show that. He uses the head-boad, head-posts, foot-posts, justs as I claimed and described in my specification, and as I showed them in my models. They insisted upon my having my patent reissued when they first got possession of it. I objected to it for certain reasons of my own: that if we wanted any improvements on the bed we could take out separate patents, and I suggested to Mr. Curtis that if my patent did not cover anything that when we took out a patent we would try and cover it up in that, so that we could cover without getting a reissue, and told the whole of the firm that it was all foolishness. They did not seem to be satisfied with it, so much so that they went to George Harding, a prominent patent lawyer, and got him to examine my patent or deed, which he did, and gave them a written opinion in regard to its validity, and also to another patent lawyer at the corner of Seventh and Chestnut streets—I don't recollect his name now, but I can tell you to-morrow—and he pronounced the patent thoroughly valid, and they apparently was satisfied at that time about it, and then they got these improvements appended, and they went along in that way.

Q. State about the other improvements. You have spoken of the first one. What relation has that new improvement to your original patent?

A. The improvements were in the mode of putting the weight in the bed. Instead of putting it in, as I had it in my bed, in short blocks, he put it in long bars running across the bed, running around under the centre or fulcrum of the body of the bed, and a cape apron extending from the head-board of the bedstead to the mattress, to keep the pillows from dropping down. That is about all the improvements he claims. Otherwise the bed is the same thing, which his patent will show.

159 Q. Was that an improvement upon your patent?

A. Yes, sir.

Q. Or an original invention which would apply to any bed?

A. You could not call it anything but an improvement, and he made it on my bedstead, and noticed it as such in the Patent Office.

Q. Who made the next improvement?

A. It was claimed to be made by Newcomb, Samuel N.

Q. Who was he?

A. He was at the time superintendent of their manufacturing; he is now a stockholder in the Hale-Kilburn Company.

By Mr. OTTERSON:

Q. How do you know?

A. He told me so.

(Objected to by Mr. Otterson.)

By Mr. BOWMAN:

Q. Did you ever see him at the defendants' office?

A. Frequently.

Q. Please state what relation his invention has to your original patent, and whether it is an improvement on it or not.

A. His invention is a rod to turn the foot-board of the bedstead; they connected the rod to the base of the head-board or post, and ran it along the inside of the roller and attached it to the foot-board, for the purpose of turning it as it goes up, to spring it into place, and as it goes down to bring it down into place. That is all the improvement out. Otherwise it is the same as my bedstead, the Everitt bedstead, or Champion folding bedstead, as they call it.

Q. Is it used upon your bedstead only?

A. That is all I ever saw it used on. It was put on that originally. I saw the original bedstead it was put on. He claims it as an improvement on my invention.

Q. Are there any other improvements upon your patent besides those you have referred to?

A. I believe there is.

Q. State what they are, and in whose possession.

A. There is another patent, patented by H. S. Hale, dated December 10th, 1878, filed, I think, in September, 1877.

Q. Are there any others?

A. Not that I know of; there may be.

Q. Have you heard of any others through the defendants?

A. I have not heard of any others except those made by outsiders outside of the firm.

Q. The last one you have spoken of, was it an improvement on your original patent?

(Objected to by Mr. Otterson.)

A. It is.

Mr. BOWMAN: We call for the production of the improvement last spoken of by the witness.

(To the witness.) Have you any knowledge of any other improvement?

A. Not by any of the firm or company. There were some improvements got up there by another party.

Q. Have you ever seen this paper before? (Paper shown witness.)

A. I do not know that I ever saw that. I have saw one just like it.

Q. Will you be kind enough to look to the names appended there as witnesses, and state whether you know them or who they are?

A. I do; Owen D. Roberts, J. B. Kilburn.

Q. Who is Owen D. Roberts? Where is he employed, and what is his business?

A. He is principal book-keeper for the Hale-Kilburn Manufacturing Company.

Q. And has been for how long?

A. Ever since I ever knew anything about the firm.

Q. And who is J. B. Kilburn?

A. He is assistant book-keeper for the defendants' firm; a nephew, I believe, of Mr. Kilburn, the president.

(The paper offered in evidence by Mr. Bowman marked "No. 19, March 27th, 1879, R. A. W.")

160 Q. If you have omitted any improvement in connection with your original patent, state what it is?

A. It is what they call "The Secretary Bed," or "Washstand Bedstead."

Q. In what does the improvement consist?

A. In adding a washstand to the bedstead, and making the front of the bedstead glass.

Q. Is that all?

A. That is about all; that is sufficient, I guess. It is sold as one and the same article of furniture.

Q. Is there any other addition you wish to make in reference to the advertising, and the different names this patent and improvements have been called by the defendants?

A. I do not know that there is, except in their books. There I found they called it, in their books, I guess I picked out twenty names, and eighteen different shapes. To show the trouble we had to get at the beds, they were in so many different shapes—there was the parlor bed, parlor bed and crib, secretary bed, champion folding bed, bedstead, and so forth. I have a list of them, but it is not worth while to give the whole of them. At least there was eighteen or twenty different shapes.

Q. By books, do you mean the defendant's account books?

A. Yes, sir; it was a difficult job to collect them.

Adjourned until Thursday next, April 3d, at 10 a. m.

PHILADELPHIA, THURSDAY, *April 3d*, 1879.

Present: The master, E. E. Everitt, H. S. Hale.

Adjourned until Thursday next, April 10th, 1879, at 11 a. m.

PAILADELPHIA, THURSDAY, *April 10th*, 1879.

Present: The master, E. E. Everitt.

Adjourned until Tuesday next, April 15th, 1879, at 3 p. m.

PHILADELPHIA, TUESDAY, *April 15th*, 1879.

Parties met at the office of the master.

Present; The master, Mr. Bowman, Mr. Otterson, Mr. Everitt, Mr. H. S. Hale.

Examination of E. E. Everitt resumed.

By Mr. BOWMAN:

Q. (Model shown witness). What is that?

A. That is one of the models that was presented to the Hale-Kilburn company some ten days before we entered into an agreement, which was on the 17th day of March, 1874. Afterward an exact copy of this was taken there, for them to work by, a large bedstead, with the exception of the hinges, which were open, or an open fulcrum. This (referring to the model) has a slat bottom in it

The large one had a spring bottom in it. The outside casing of these beds is merely a casing. You cannot lie on it at all. It has to have a bottom of some kind or other—a spring or a slat.

(The model offered in evidence by Mr. Bowman, and marked "No. 20, April 15th, 1879. R. A. W.")

Q. When was that model made?

A. That model was made in November and December, of 1873, and presented to them a month before they received the patent papers from Washington, of the bed.

Q. Is there anything else that you desire to say in reference to the model?

A. Nothing further. Here is one of the original advertisements in regard to that bed, dated October 3rd, 1874. (A copy of the public ledger, dated October 3rd, 1874, produced.)

Q. (Advertisement of Hale, Kilburn & Co. shown witness.) Do you know whose advertisement that is?

A. Nothing further than what I see in it. I suppose it is theirs; it has their name and address.

Q. Do you mean the name and address of the defendant's firm?

A. The name of Hale, Kilburn & Co., No. 48 and 50 North Sixth street.

161 (Paper offered in evidence by Mr. Bowman, and marked "No. 21, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. Have you any more advertisements of this character?

A. I have quite a number of those papers.

Q. Where are they? Produce them.

("The Fair Messenger of the Baptist Home," dated October, 1877, produced.)

(The paper offered in evidence by Mr. Bowman, and marked "No. 22, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. I call your attention to "The Public Record" of Philadelphia of March 29th, 1879, and to an advertisement on the eighth page thereof. (Paper shown witness.) Whose advertisement is that?

A. Hale, Kilburn & Co.

(The paper offered in evidence by Mr. Bowman, and marked "No. 23, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Mr. Bowman also offers in evidence—

A copy of "The Trade Bureau" of April 12th, 1879, and an advertisement on page eighteen thereof, marked "No. 24, April 15th, 1879. R. A. W."

(Objected to by Mr. Otterson.)

Also a copy of "The American Cabinetmaker," dated May 13th, 1876, and an advertisement on page four thereof, marked "No. 25, April 15th, 1879. R. A. W."

(Objected to by Mr. Otterson.)

Also four circulars, marked "No. 26, No. 27, No. 28, No. 29, April 15th, 1879. R. A. W."

(Objected to by Mr. Otterson.)

Also a wood cut, marked No. 30, April 15th, 1879. R. A. W.

(Objected to by Mr. Otterson.)

Q. Take that (paper shown witness) and look at it. In whose handwriting is the handwriting upon that paper?

A. Mr. H. S. Hale, I believe.

Q. Will you be kind enough to state what it is?

(Objected to by Mr. Otterson, because the paper will speak for itself.)

A. This is merely an agreement.

Q. Cannot you state what that paper is?

A. An agreement between them and me to fit up my stand at the Centennial Exhibition, in consideration of a combined desk and washstand.

Q. Is it signed by any one?

A. No, sir.

Q. Will you state whether or not it contains all the facts that were agreed upon between you in relation to the matter referred to in it?

(Objected to by Mr. Otterson.)

A. It does not. Not all of them.

Q. Then I understand it is simply a memorandum of some of the points which were agreed upon between you?

A. Yes; some. But this is the original, and I have another one.

Q. Where is the other one?

(Paper produced.)

Q. Is that executed?

A. Yes, sir; that—referring to the first paper produced—appears to be the original.

Q. This, you have stated, is a memorandum, and is not signed by anybody?

A. It contains part.

Q. It is a memorandum drawn up before the agreement you have in your hand was executed?

(Objected to by Mr. Otterson.)

(The memorandum offered in evidence, and marked "No. 31, April 15th, 1879. R. A. W.")

Q. Will you state whether the defendants deducted any money from your royalty on account of that agreement?

A. No, sir; not on account of that agreement.

Q. Did they on any account connected with that?

A. They deducted money from me for the examination of my patent by George Harding and another patent lawyer.

162 Q. What was the amount?

(Objected to by Mr. Otterson.)

A. $162.50.

Q. Did you agree that they should deduct that sum from your royalty?

A. I did not.

(The agreement offered in evidence by Mr. Bowman, and marked "No. 32, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

The WITNESS: This agreement was not satisfactory. They agreed in it to advertise my European patents for sale at their exhibition stand at the Centennial (objected to by Mr. Otterson), and advertise it in all their cards, circulars, etc.; to hang cards on each article exhibited not less than eight by ten inches in size, which they never done; and no advertisement appeared until the exhibition had run nearly two months, or quite two months, and then it apneared in such a way that you could not tell what was for sale; you cannot tell what patent it is or anything about it. (Circulars produced.) I put up two large cards on their stand, at my own expense, and one on my own stand, at my own expense; and that is the only shape, on their small circulars, on the last page, at the bottom, that they advertised it, and you cannot find out what it is that is for sale. I found fault that this did not appear there. They made some excuse, and said they would attend to it, and did, in the fore part of July attend to it, and that is what they produce.

(One of the circulars produced offered in evidence by Mr. Bowman, and marked "No. 33, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. The last circular offered in evidence is what they produced, is it?

A. Yes, sir; there were other cirulars like that, of different colors. Here is another of them. (Circular produced.)

Q. (Paper shown witness.) What is that paper?

A. This is a receipt from Hale, Kilburn & Co. for $162.50.

Q. How was that money paid by you?

A. Why, they kept it out of my royalty, and I objected to it. They kept it in spite of me, and then I wanted a receipt to show that they had kept it; and it was a long while before I got a receipt—some year and a half or two years. Finally I got it. Mr. Roberts gave it to me. He was, of course, ordered to do so; I bothered them so much.

Q. You never authorized them to contract the expense?

No, sir.

(The receipt offered in evidence by Mr. Bowman, marked "No. 34, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. Have the defendants ever refunded you that money?

A. No, sir.

Q. Have you anything else to say?

A. In regard to their rendering to me accounts of No. 16 beds, 18's, 10's, 11's, 17's, etc., they marked the date of my patent—that is, March 24th, '74—on the back of the head-boards of the whole of them, and they done so up to the 1st of February, and I don't know but what they are doing it now, every one of them. I never saw one of them that it was not there, marked there according to their orders, as I understand.

Mr. OTTERSON: Do [not] tell what you understand. If you know anything state it, but we don't want your understanding.

The WITNESS: Well, I know they are there on the beds, and the spring bottoms that they used in my beds are made for the bed on purpose. They are not made as they would make them if they were made for the ordinary stationary bed. The cross-bars in those beds that go into the folding bed are made to fit into a stirrup, or made with a slot in the end of the cross-bars to fit over a button. There is no rail running lengthwise underneath the bottoms, as is usual in the ordinary bottom made for stationary beds. They usually put two rails running lengthwise, and the top of the bed is made a little shorter than the ordinary beds, so as to turn the beds. They are made different, and expressly for that bed. If we got a bed bottom of any kind, we had to change it—alter it—so that we could use it in the bed.

(Objected to by Mr. Otterson.)

163 By Mr. BOWMAN:

Q. When the defendants would make settlements with you would they deduct the price of the bottoms from the bed?

(Objected to by Mr. Otterson.)

A. Well, as far as I can see by their statements, they did not at first, for the first four months, or about that time; but after that they did.

Q. Did they continue to deduct the price of the bottoms from the beds in their settlements with you, down to the time of filing the bill, from the first four months?

A. I find by their books that they did.

Q. Can you give us an idea of the value of those bottoms?

A. What do you mean; per piece?

Q. What difference would it make in their accounts to you?

A. Well, they charged from seven and a half to ten dollars, and once in a while, I believe, 12 dollars—from 7 dollars and a half to ten dollars per piece. Now, I do not want it understood that all those bedsteads sold had spring bottoms in. Some had slat bottoms in, and there were some where they had no bottoms in at all. You will find in our account that we took them just as we found them in their books of original entry.

Q. Do I understand you to say, as an expert, that the bottoms constitute part of the bed?

(Objected to by Mr. Otterson.)

A. Yes, sir; they could not use the bed without a bottom of some kind.

Q. And do you claim that your patent covers a bottom for the bedstead?

(Objected to by Mr. Otterson.)

A. It undoubtedly does; it calls for it in the specifications.

Q. Have you anything further that you desire to say?

A. I wish to say something in regard to the reissue of the Stark patent. I do not wish it understood that the first I ever heard of Mr. Stark at all was through Mr. J. Warren Hale, the secretary of the company, in March, 1878. I knew of him before; but it was the first I heard of him in connection with the bed and the Hale-Kilburn Manufacturing Company. On the 9th day of February, 1878, Andrew Stark, of Topeka, Kansas, stopped at the Merchants' Hotel, on Fourth street, below Arch, within two squares of the Hale-Kilburn Manufacturing Company, and remained there until the evening of the 8th of May, 1878, and left there after tea. On the 27th of February, 1878, Andrew Stark, of Topeka, Kansas, applied for a reissue of his patent, dated August 22nd, 1865.

By Mr. OTTERSON:

Q. Where do you get this information?

A. I saw it on the papers you surrendered yourself, for one thing.

Q. Surrendered to whom?

A. To a master.

Mr. OTTERSON: Then the papers will speak for themselves.

The WITNESS: The application for a reissue of his patent was signed by himself and the two book-keepers in the employ of the Hale-Kilburn Manufacturing Company, 48 and 50 North 6th St. If I cannot say anything about what is in print or writing——

Mr. BOWMAN: Tell anything you know of your own knowledge in reference to this matter; the papers will speak for themselves.

The WITNESS: I do not know that I have got anything more now. There are things, if I could think of them, that are in print, and papers.

Cross-examined by Mr. OTTERSON:

Q. You said that the settlements of accounts between you and the defendants were not according to agreement; what do you mean by that?

A. That they never settled up in full for me.

Q. You mean that they did not pay you in full?

A. Yes, sir; and many things that they did not pay me for at all.

164 Q. From the very outset, is that so?

A. I think not from the outset.

Q. Do you mean to say now that they did or did not settle with you in full at the outset, because I do not understand it?

A. I think for the first four months, or nearly so, they paid me all. I think so; I do not know for certain.

Q. Then when you speak of settlements in your direct examination you mean payments by the defendants to you, do you?

A. I mean that they paid me once a month. I do not say that it was a settlement in full. Excuse me. I can answer that a little more fully. You will find all my receipts on account up to January, 1877. There never was no settlement in full.

Q. You said that prior to the first of January, 1877, you had had no statement from the defendants, and give that as a reason why you refuse to give a receipt in full at that time. Had they refused to give you a statement? Do you mean to convey that idea?

A. The accounts had been unsettled——

Q. Will you not answer my question now and say nothing else? Had they refused to give you a statement?

A. They always promised me, when I asked them, that they would give me one, but did not do it. They did render me a statement, or rather gave me a statement; but it was not the statement that my agreement called for, by any means. I think they——

Q. Was that January, 1877, or about that?

A. I think about that time they did render me an account; but it was not anything like the agreement calls for.

Q. And that is the one you refer to—the one about January 1st, 1877?

A. They rendered me an account——

Q. You do not answer my question. Was that account which was not according to your agreement the one you referred to as having been rendered about the first of January, 1877? Won't you answer my questions and stop your long speeches?

A. They rendered a statement, as they called it; but it was no statement like my agreement calls for. It did not give the number of bedsteads sold and made at all.

Q. Was that the one you referred to as having been given you about the first of January, 1877?

A. I believe it is.

Q. Was there not a delay in rendering your statements because of hesitancy on your part as to the form in which you would have them put?

A. No, sir.

Q. Did not the defendants offer to make statements to you according to your directions from the very beginning?

A. They did not. When I went from them I ask them about it. Finally I dogged them until Harry Hale himself said that he didn't know how I wanted them. Said I, "Read your agreement and that will tell you;" and he did, and then rendered them; but he did not render them then as he ought to have done. There were no use in his asking me. The agreement told him.

Q. You said that you were refused access to the defendants' books?

A. I was.

Q. Do you know Mr. Noblitt?

A. I do.

Q. Did not he and you spend several days going over the books at the defendants' counting-room in July, 1877?

A. No, sir.

Q. Did not Mr. Hoffman and you do it?

A. No, sir.

Q. Did you never do it?

A. No, sir; Mr. Hoffman and me were refused the books.

Q. By whom?

A. By Mr. Kilburn, president of the company.

Q. Who was present?

A. Mr. Hoffman and myself. Also Mr. J. Warren Hale refused to give me the books.

165 Q. Who was present besides yourself and Mr. Hoffman and Mr. Kilburn?

A. Mr. Roberts was in the office; I do not know whether he heard what was going on or not.

Q. Have you the copy of the letter of Stark of April 10th, 1878, which was furnished by Mr. Hale?

A. Yes, sir.

Q. Will you produce it?

A. (Copy produced.) I do not know that this is the identical words of that letter, but I ask to copy it and Mr. Hale said he would have it copied for me, and that is the copy he handed me, and said that John had copied it. That letter I saw the morning of the 10th, about ten o'clock, in their office.

Q. Did you know of the Stark patent prior to this letter of April 10th?

A. I did.

Q. When did you first learn of it?

A. The first that I ever knew anything of Stark's patent was through Mr. Howson, when he wanted to have my patent reissued.

Q. And when was that?

A. That was in March—April—June—we had talked over it considerably—of 1874.

Q. And your patent was granted when?

A. My patent was granted March 24th, 1874.

Q. Was not your application for a patent rejected again and again because of the interference of Stark's patent?

A. I found afterwards that it had——

Q. Won't you answer my questions, and then explain as much as you like?

A. I believe it was rejected.

Q. On account of its conflict with the Stark patent is the question.

A. Well, I cannot say on what ground. I know——

Q. Stop! Do you not know that because of the existence of the Stark patent and the Maine patent, and others, covering the same ground as your specifications that your applications were repeatedly rejected?

A. Not at that time I did not know; I knew afterwards. I found out afterward, after my patent was granted, that it had been rejected on account of Stark's patent, but I do not know on what grounds.

Q. Was it not rejected three or four several times?

A. Not to my knowledge; it might have been. My agent did not tell me the particulars.

Q. You have said that the statements that were rendered you by the defendants did not correspond with this book, (referring to the Plaintiff's Exhibit No. 10); wherein is the difference?

A. Well, I believe you will find No. 16 beds in this book, and not in my statements. All No. 16 beds, 10's, 11's, 17's, and 18's, have the improvements made by Cheney Kilburn in, that is the iron running crossways to the bed, and the apron is used in them beds. In fact all the beds made since 1875 had his improvements in.

Q. What was there in the beds you have mentioned by numbers covered in your patent?

A. To commence, they used the open fulcrum or open hinge in all their beds, which belongs to me, and the improvements were made on my bed that they used in it originally, and which I have as much right to as I have to my own original bed.

Q. I want to know in what respect the beds that you have enumerated used the claims of your patent; was the open hinge the only thing?

A. No; the base was made the same as they made mine, with the exception that they did not extend up the end piece so high; they used the headboard the same way, and they used the front the same way, as I did.

Q. You are speaking of claims that are mentioned in your patent and points that are covered by your patent?

A. I am speaking of the specification and description of my invention. Many a time a man don't claim all that he is entitled to.

166 Q. Did you ever see either a bed or a drawing of Stark or Maine's patent?

A. I saw Maine's patent and bedstead; I saw the drawings of Stark's.

Q. Do not they both use a headboard?

A. They do.

Q. Do not they both use a base?

A. Yes, sir.

Q. Is not their headboard like yours?

A. They make it in a variety of ways.

Q. In principle, I mean: I do not mean in detail?

A. None of them made a headboard with posts to have a folding bed, except me.

Q. Did any of them use a base but you?

A. Yes, sir.

Q. They both used a base, did they not?

A. They have to have a base of some kind.

Q. In what other respects do you claim that the accounts rendered you failed to correspond with the book which is marked No. 10?

A. I ought to have them statements here, but I believe that I can say, without making any examination, that there are No. 16 beds in the book, and they are not in my statement.

Q. So you have said; and now I ask you in what other respects is the accounts different?

A. I don't think there is any 17's or 18's in my statements.

Q. Are you sure of your answer?

A. That is about as near as I can come to it without examining the statements themselves. I know they differ. I did not examine them much. I can probably give you a little more satisfactory answer in regard to the base of that bed differing from Stark's and Maine's, if you require it.

Q. Well.

A. Mr. Stark's or Mr. Maine's patent does not call for any weights in the bottom of their bed. Mine does. Neither one of them does. That is another difference.

Q. Is that your further answer in explanation of the infringement upon your beds?

A. That is just merely telling you the difference.

Q. Do you say that your bedsteads were the first in which weights were used?

A. I do not.

Q. Do you claim the principle of the use of weights?

A. I do not.

Q. Is that part of your claim?

A. I describe them in my specification.

Q. Do you claim them as part of your patent?

A. I claim that as part and parcel of the bedstead to make it complete.

Q. Do you claim the open fulcrum or hinge as part of your patent?

A. I do, as part and parcel of my invention.

Q. Is it in your patent?

A. It is described in the specifications and shown in the drawings.

Q. Is it in your claim?

A. I do not know that it is claimed of itself. I do not think it is; but it is part and parcel of the bedstead.

Q. Do you claim that it was novel?

A. I do, and new to a bedstead.

Q. Do you claim as part of your invention the bottoms and the springs?

A. I undoubtedly claim it as much so as I would the headboard or the footboard, or the feet of a bedstead or any part of a bedstead, because it is not complete without them. My specifications calls for a bottom of some kind. I describe in my specifications that we can use any kind of a spring bottom in that bed by having them made for it; that is, we cannot use the spring without some alteration.

Q. Could not ordinary springs or bottoms be adapted to your bed?

A. They can by changing—any springs.

Q. Is not that true of the Stark or Maine bed?

A. I do not know anything about that; I suppose it is.

167 Q. You say that there was no report to you, in your accounts, of bedsteads with looking-glass fronts and extra finish,

ebony and gold; do you mean to say that they were not accounted for as bedsteads, independently of this extra finish?

A. I mean to say that no such bedsteads appeared in my accounts, and I know there has been such bedsteads sold.

Q. Do you mean to say that they were not accounted for to you as bedsteads, without reference to the extra expense that had been put upon them in their manufacture?

A. I cannot tell that.

Q. Who was the accountant that you spoke of as having been with you when you were not allowed to see the books—was not that Mr. Hoffman?

A. It was Mr. Hoffman; yes, sir. Would you like to have the date of our visit there?

Q. That is not material.

A. I have the date—we were there twice—if you would like to have it.

Q. Where are the accounts that were rendered to you in the month of July, 1877, and which did not accord one with the other?

A. That is the month that I received the first statement from them of bedsteads sold.

Q. You say that there were three accounts rendered you in that month, and they were all different; where are they?

A. I will have to explain that a little, if you have no objection. I went and asked for my account. I asked Mr. Roberts, and he generally told me. I asked him how much my account was, and he said it was so much; that is, giving the amount without any written statement, and then he changed it, and said he had made a mistake or something, and it was less. Then, when Mr. Harry Hale gave me the statement in writing, it was different again. So there was three different statements; two of them verbal, and one written.

Q. All given on the same day, did you say?

A. No, sir. Well, Mr. Hale told me he was busy, and I had not time to wait. I suppose I would have got the written statement if I had waited for it, but I got it in a day or two afterward. He had made it afterward. These mistakes do not amount to much, but there was a difference. I do not think it was intentional.

Q. Nor was it material, you say?

A. Well, I think there was a few dollars' difference. I would go in, and the first thing I would say would be, "Mr. Roberts, is my account made out?" He would say, "Yes." I would say, "How much is it?" and he would tell me.

Q. Without looking at it?

A. Sometimes he would and sometimes he would not. Sometimes he would take this book and look at it and say, "Your account is so much."

Q. I am asking particulars about this time in July, 1877?

A. I could not say whether he looked at it or not, but I judge that Mr. Roberts thought he was right.

Q. Did you object to them that there was a difference in the statements?

A. Not until after I got my account off. I was about getting that

account; insisted upon having it, right or wrong. That was my first statement, and I got tired of asking for it, and said that I must have statements for the future; that I wanted to know how I stood; and I told Mr. Kilburn—that is, the president of the concern—that it was very strange.

Q. That was in July, 1877, was it, that you are talking about?

A. That was July's statement that I got in August; I mean for July's account. Sales made in July they rendered in August. The 1st of August it was due, and it was not an unusual thing for me to go in there after the 1st of the month and say to Mr. Roberts: "How is my account going to pan out this month?" and he would say: "Pretty well," or something to that effect; or he would say: "Not very well," and I suppose that I have asked Mr. Warren Hale, and Mr. Harry Hale, too, how my account would be for that month. Sometimes they could tell, and sometimes they could not. The account was not made up.

168 Q. Do you still insist upon the statement that you never got an examination of the defendants' books until they were examiner here in the master's office?

A. I never saw any book but this. (Referring to Plaintiff's Exhibit No. 10.) Never. No book of account. I saw them lying on the desk, but never went in to examine them. This is the only book they ever offered me, either the secretary or the president. They refused to give me any other. I said this had none of the the manufacture in, and was not a full account; I said that to both the secretary and president.

Q. And that was your principal objection, was it not, that it did not contain an account of the manufacturing operations?

A. No, sir; there was other objections.

Q. But you made that, among other objections?

A. That, among others. I find, according to their account of their manufacture here (in the office of the master), they never gave any account of the manufacturing of any bedsteads until February, 1875, and then there was an account of bedsteads; but you could not tell what they was or what kind.

Q. Giving you an account of the manufacturing of bedsteads?

A. Yes, sir; that is, before the master, some six months after bedsteads had been sold.

Q. You say that they charged you $99.00 for 26 bed bottoms?

A. Yes, sir.

Q. In the close of 1874 was not that a charge to correct a prior mistake in the account?

A. I cannot tell what it was. I see that they charged me with that many bed bottoms that I never bought at that time.

Q. And that is all you know about it, is it?

A. I found it on the statement they rendered to the master here. I had no account of it until I saw it here, in this office. Never. They kept it off me, me not knowing it at all until I seen it here on the statement rendered to the master.

Q. And you say that that is all you know about it, is it?

A. All I know is seeing it here; and I know that I never bought

any, and I never heard of it from 1874 up to now, except in this office. They never gave me any account of anything of that kind.

Q. Did not Mr. Harry Hale tell you that they had allowed you a royalty on these bottoms to that extent——

A. Never.

Q. Wait until I get through—and that it was by mistake, and this entry was made for the correction of that mistake?

A. Never, to my knowledge.

Q. I call your attention specially to it, because I am instructed that the question I have asked is upon the line of the facts as they were. Do you still say that he never did?

A. He never did, to my knowledge. Will this book (referring to Plaintiff' Exhibit No. 10) show it? Will Mr. Harry Hale show it to us in his book?

Q. Yes. I call your attention to an entry on page 201 of this book, at the close of December, 1874, "Less spring- to 26 beds, $130.00, $99.45." Is not that the item?

A. Well, I see it here now, but I never noticed it before, because if I had I should have surely spoken of it. Can I make a little explanation about this book (Plaintiff's Exhibit No. 10)?

Q. Yes, sir.

A. I do not think, as I said before, that I ever saw the book over four or five times, but it might have been there, me not knowing it; but if I had known it being there I would have surely said something about it, because they had no business to charge me with springs.

Q. When did you first mention the matter of Stark's patent to Mr. Kilburn, or to any of the firm?

A. I think I am certain that Mr. Kilburn spoke to me first about it. It came through Mr. Howson, their patent agent. He examined my patent, and wanted it reissued; and I wanted to know on what account, and he said on account of Stark's patent; and he
169 said also on accouat of Maine's patent. This was the excuse, and they insisted upon me having it reissued, and I objected to it.

Q. The question is a question of time; when was this?

A. This was soon after the signing of the agreement on April 16, 1874; that is, along some two or three months afterwards; four or five months, probably.

Q. Was it not longer still?

A. It was not till after George Harding and Mr. Collier examined my patent, and gave a written opinion as to its validity and not infringing on those particular patents. They gave their written opinions.

Q. To whom?

A. To the Hale-Kilburn Manufacturing Company, or rather Hale, Kilburn & Company. They have them; I saw them.

Q. When did Mr. Kilburn or the defendants first know of the Stark patent, as far as you know?

A. I think that Mr. Howson told them.

Q. Well, this was at that time, four or five or six months after this, was it?

A. It was right there, because Mr. Kilburn had him hunt up my patent and all patents relating to the bedstead, and they were the ones they found which they supposed would come in contact with me. Mr. Kilburn wanted other advice besides Mr. Howson's on it.

Q. And this was several months after this contract had been entered into with Mr. Kilburn or the company, as I understand you?

A. They made me——

Q. Won't you answer my question?

A. I think it commenced right away, because Mr. Howson said that my patent should be reissued.

Q. Please answer the question.

A. He told us, right on our signing the agreement, that my patent would have to be reissued on those two patents, and I objected.

Q. What did you mean a moment ago, in that connection, by saying it was three or four months afterwards, and might have been longer?

A. I will tell you why. I did not want my patent reissued if I could help it, and we talked the matter over, and talked it over, and finally Mr. Kilburn says, "I shall see a first-class lawyer, and if he says that your patent ought to be reissued, we will have it reissued." I told him, "All right." After he saw him, and seen two, and when they gave their written opinions that it was valid, they dropped it. I think that you will find that it was some three or four months that this written opinion was given after this signing of the agreement. That is a rough guess.

Q. Did they know anything of either the Maine or the Stark patent at the time of this agreement made with you?

A. They were the first ones who told me about it. It was my first knowledge—it came through Mr. Howson—of the existence of those two patents. My attorney never told me anything about it. My attorney got so much money to get me a patent, and he was very careless about it, in one sense of the word. He got the patent, and did not tell me anything about what it was rejected for, if it was rejected. There is not one patent in a thousand that goes through the office without being rejected.

Adjourned until Tuesday next, April 22d, 1879, at 3 p. m.

PHILADELPHIA, TUESDAY, *April* 22, 1879.

Present: Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

E. E. EVERITT re-examined.

By Mr. BOWMAN:

Q. I understand you have some corrections which you desire to make in connection with your testimony at the last meeting; if you desire to make any corrections, do so.

A. When you asked me about this memorandum and agree-
170 ment in regard to the Centennial stand at the exhibition, and wanted to know whether they had kept any money on account of that agreement or memorandum, my answer was "No," where it ought to have been "Yes."

Q. Can you state the amount which was deducted from you by the defendants on that account?

A. Not exactly; I have got bills to show it.

Q. Have you the bills here?

A. I have some of the accounts, I think. (Bills produced.) They was to fit up my entire stand, except the platform.

By Mr. OTTERSON:

Q. Was not this agreement in writing?

A. Partially in writing.

Q. Then let us have the writings first.

A. You have them.

Q. Where are they?

A. They were offered in evidence last week; they was to fit up my entire stand, except the platform; I was to pay for the platform and the sign, and they were to fit up the rest in consideration of the surrender to them of a patent of a combined wash stand and desk, which I have an agreement drawn up to their orders, but not signed.

By Mr. BOWMAN:

Q. Has this bill anything to do with it?

(Bill for $90.80 shown witness.)

A. Yes, sir; it is part correct and part not.

(The bill offered in evidence by Mr. Bowman and marked "No. 35, April 22d, 1879, R. A. W.")

Q. Please state what part of that bill contains proper charges against you under your agreement with the defendants?

A. The platform is proper; I ought to pay for that; and the lettering of the sign is correct, as I told them I would have it lettered myself; there was nothing said about it; the railing, washers, and posts I had not ought to have paid; the carpet they bought without my authority; they did not ask me anything about it, but put carpet down on my stand as they did on their own, and charged me with it; Mr. Harry Hale himself went and bought it, and after he bought it he told me he had; I told him he ought to pay for it then.

Q. Was the whole amount of that bill deducted from you by the defendants in their settlements with you?

A. No, sir; not the whole; hold on; yes; the whole of this bill; they paid these, and then they took it out of my royalty, when it became due, $90.80; there are two or three bills mixed up together.

Q. Can you give the exact amount which, under your agreement with them, should have been deducted?

A. Well, they could not deduct according to their agreements, both the written and the verbal, they had with me, but thirty-five dollars.

Q. And do I understand that you claim the difference between $35 and $90.80.

A. I do.

Q. Look at that paper. (Paper shown witness.) Are there any charges made against you in that statement and amounts deducted from you by the defendant which should not be charged and deducted?

A. Yes, sir.

Q. State whate they are.

A. "One-half of fees on bedstead, $162.50;" for some pattern work, $4.20; then there is a bill of $10.08; then there is a bill of $1.44; then there is another bill for $1.26; there is one entry or charge that I do not know what it is for, "Eli Love," but those other charges I mentioned I hadn't ought to pay; I can tell you what they were for.

Q. First let me ask you. Were the sums you have mentioned deducted from your royalty by the defendants in their settlements with you?

A. They was.

(The statement offered in evidence by Mr. Bowman and marked "No. 36, April 22d, 1879, R. A. W.")

171 By Mr. OTTERSON:

Q. Do not these things appear on the statement?

A. They appear in their books, I suppose.

Q. On the accounts they rendered to you?

A. Here is the accounts they rendered. (Accounts produced.) They don't show here. I can show what they are for and why I should not have ought to pay for them.

By Mr. BOWMAN:

Q. Go on and tell us why you should not have paid those sums?

A. The balance of this was for making an experiment in the bedsteads. Mr. Kilburn told me if I could go to work and do a thing it would be of great benefit to us. I told him I would, provided he would pay the expenses, and he said he would, and I went on and ordered the wood, and spent some seventeen or eighteen dollars, and Mr. H. S. Hale came up there and told me, "Mr. Everitt, if you experiment any more on that, you will have to do it at your own expense, not ours." Said I, "All right." It appears they were satisfied it would not suit them. Well, they paid the bills, promised to do so, and my agreement says they would pay the expenses of this invention. I objected to it when I came to get my money, but they took it off me, kept it back in spite of me. There is some other things—I don't know exactly where they are now.

Q. Have you cleared up all about the agreement for fixing up the Centennial stand?

A. I believe I have. They was to fit up the stand, all except the platform.

Q. Are there any other corrections, or statements, you wish to make in connection with your examination at the last meeting?

A. I wish to make a correction where you asked me the cost of the spring beds per piece, and I told you from seven and a half to ten dollars, and sometimes twelve. I meant the spring beds that they were making in their factory; that that was about the price they charged to us, but I don't mean all the spring beds that goes in that bedstead, by any means. They have spring bedsteads there that I think they come as low as $2\frac{1}{2}$, $2\frac{3}{4}$, 3 dollars and $3\frac{1}{2}$, and, of course, it would be wrong to include them at $7, when they only cost $2 or $2\frac{1}{2}$.

Q. I understand your claim to be that you are entitled to your share of royalty on the springs, whatever they cost.

(Objected to by Mr. Otterson.)

Q. Is there anything else you desire to say in that connection?

A. Not that I can think of now. I desire to make a correction of an entry on the minutes. The minutes state that the store I had was on Second street; it ought to be 1315 Chestnut. Now, in answer to Mr. Otterson, I made a remark in regard to my agent. I do not wish to convey the idea that he is incapable of transacting business of that kind, because I think him one of the most capable in this city, and he done business with me as he done with everybody else at that time, and I could not expect him to do anything more than he did do in regard to getting my patent. As for its being rejected four times on any patent, it never was. The Patent Office does not allow any one to come up for four times; and as for Mr. Stark's patent, I do not know, to this day, whether my patent was rejected on it. I want to say further that it was after the agreement was signed some months before ever I saw a Maine bed. I said I had seen them, but I don't want to convey that I had seen them before I had made mine, because I never did. It was a thing understood by all parties.

Q. Is that all the corrections you have to make?

A. That is about all the corrections I can think of now.

Q. Did you state, in your examination-in-chief, what the defendants' agreement was as to how your patent should be named and advertised?

A. Yes, sir.

Q. Please look at that card (card shown to witness) and state whether it publishes your patent as you agreed upon with the defendants?

A. It does, with the exception that there is a name added underneath, "The Champion."

172 Q. Did the defendants object, after making the agreement with you, that it should be published in that form?

A. They did.

(The card offered in evidence by Mr. Bowman, and marked "No. 37, April 22d, 1879, R. A. W.")

(Mr. Otterson notes an objection to the three exhibits offered in evidence to-day.)

Adjourned until Monday next, April 28, 1879, at 1 p. m.

MONDAY, *April* 28, 1878.

Present: The master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

Mr. MITCHELL: I offer in evidence all the books of the defendants which have been produced here and referred to by Mr. Hoffman in his testimony and by the other witnesses.

Also the patents for improvements.

Also the certified copy of the patent reissued to Andrew Stark, produced by defendant on call.

Also all the receipts and receipt book containing such receipts given by the plaintiff to the defendants for moneys paid to him.

Also the accounts purporting to be monthly statements produced by the plaintiff, furnished by the defendants to him, showing the royalties to which he was entitled.

Also the weekly returns from the branch stores of the defendants to them, showing the amount of sales and receipts of the Everitt bedstead and improvements.

I also renew the call for the letter and envelope shown by defendants to the plaintiff, as related by the plaintiff in his testimony-in-chief, on the 26th of March, 1879, upon page 28 of the testimony, and as called for at the time—on page 29 of the testimony.

I also call upon the defendants to produce the contract between Andrew Stark and the defendants referred to in the due bill in evidence.

Also the prior contract between Stark and the defendants for an absolute assignment of Stark's right to them.

I also call upon the defendant- to produce the copy of the bill filed in the circuit court of the United States, which copy was sent by Mr. Otterson to the plaintiff's counsel for examination, contained in his letter of 7, 10, '78.

I also offer in evidence the said letter of Mr. Otterson, defendants' counsel, to plaintiff's counsel, as follows:

"No. 16 NORTH 7TH ST., PHILA, 7, 10, '78.

"E. C. Mitchell, Esq.

MY DEAR SIR: The enclosed was brought to me this a. m. by the defendants therein mentioned. I send it to you for examination, and for the examination of Mr. Everitt, your client, when you will please return it to me; and I want whatever information and assistance he may have at his command to resist the attack. Will you please let me hear from you, and oblige,

"Very respectfully,

"JAMES A. OTTERSON."

(Mr. Otterson having the paper present produces it, and the same is offered in evidence by Mr. Mitchell, and marked "No. 38, April 28th, 1879, R. A. W.")

I also offer in evidence the letters patent granted to Elisha E. Everitt, No. 148,940; patent granted March 24th, 1874, being the patent in dispute.

(The letters patent offered in evidence and marked "No. 39, April 28th, 1879, R. A. W.").

I also offer in evidence the record of the circuit court of the United States for the eastern district of Pennsylvania, of April sessions, 1878, No. 82, docket No. 9, page 85, the case of Andrew Stark against The Hale & Kilburn Manufacturing Company.

I call for the production of the patent for the improvement issued to H. S. Hale, dated December 10th, 1878, mentioned by the plaintiff upon examination, upon page 62 of the testimony, and called for upon page 63.

I call upon the defendants to produce the written opinion given by Messrs. Harding and Collier on the validity of the plaintiff's patent at, or shortly after, the time of the agreement between plaintiff and defendants.

173 I call upon the defendants to produce the letters that they received from Asher B. Stevens on the subject of this patent during the months of February, March, April, 1878. I inform Mr. Otterson, the defendants' counsel, that on Saturday next I will move the court to allow an amendment of the bill to include a prayer for the assignment of Stark's patent to the plaintiff.

Adjourned until Monday next, May 5, 1879, at 1 p. m.

PHILADELPHIA, MONDAY, *May 5th*, 1879.

Parties met at the office of the master.

Present: Mr. Mitchell and Mr. Everitt.

On an account of an engagement of Mr. Otterson, adjourned until Tuesday, May 13th, 1879.

PHILADELPHIA, TUESDAY, *May 13th*, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, E. E. Everitt, Mr. Otterson, Mr. H. S. Hale.

The plaintiff's counsel calls upon the defendants for the various documents and papers referred to specifically in the calls made during the examination of the witnesses at the last meeting.

The defendants' counsel produce the letter of April 10th, 1878, from Mr. Mason to the Hale-Kilburn Manufacturing Company; the envelope not being produced, it having been destroyed.

(The letter offered in evidence by Mr. Bowman, and marked "No. 40, May 13th, 1879, C. A. H.")

Mr. BOWMAN: I now call for the contract between Andrew Stark and the defendants, referred to in the due bill in evidence.

Mr. OTTERSON: In reply to that I say there was no contract prior to the receipt referred to, unless the contract is expressed in the receipt. The contract is here. It is dated the 7th March, 1878.

Mr. BOWMAN: Do I understand that this is the only contract between Andrew Stark and the defendants?

Mr. OTTERSON: I am so informed.

(The contract dated March 7th, 1878, offered in evidence by Mr. Bowman, and marked "No. 41, May 13th, 1879, C. A. H.")

Mr. BOWMAN: I now call for the production of the patents for the improvements issued to H. S. Hale, dated December 10th, 1878, mentioned by the plaintiff on examination, upon page 62 of the testimony, and called for upon page 63.

Mr. OTTERSON: The letters are here, but I produce them under protest. They are letters granting patents to Henry S. Hale, and one of date subsequent to the reassignment to the Hale-Kilburn Manufacturing Company of the patent in dispute.

(The letters offered in evidence by plaintiff's counsel and marked "No. 42, May 13th, 1879, C. A. H.")

Mr. BOWMAN: I call for the production by the defendants of the written opinion given by Mr. Harding and Collier as to the validity of the plaintiff's patent at or shortly after the time of the agreement between the plaintiff and defendants.

(Mr. Otterson declines to produce it.)

I also call upon the defendants to produce the letters they received from Asher P. Stevens on the subject of this patent during the months of February, March, and April, 1878.

(Mr. Otterson declines to produce them.)

Mr. BOWMAN: There was a call made for an assignment mentioned in the receipt of May 11th, 1878.

Mr. OTTERSON: That is the paper you have just had.

Mr. BOWMAN: That is dated in March. We want the prior contract. We call for the contract and the assignment under the contract.

Mr. OTTERSON: We know nothing of any contract prior to the receipt just read from—May 8th, 1878—except this assignment of the patent which is dated March 7th, 1878.

Mr. BOWMAN: You had no contract prior to that date?

Mr. OTTERSON: No; none in writing, that I know of.

174 E. E. EVERITT, re-re-examined.

By Mr. BOWMAN:

Q. In the seventh paragraph of the defendants' answer they aver that you were consulted and advised about the Stark patent, and were requested to enter into some arrangement to purchase or control the same. Please state whether the averment in that paragraph of the bill in that respect is true or not.

A. It is not; they never did until after the 10th day of May, 1878, ask me to co-operate, in any shape, form, or manner, and then it was for me to buy the whole of it myself, and turn it over to them—give 5 of my 7 per cent.

Q. Is there anything else you would like to explain?

A. When Mr. Howson, their agent, went to draw the contract between the two parties, they and me, he said that the patent would

have to be reissued, and for what reason. On the reason of the Maine's and the Stark patents, he said. I told them if it was really necessary it should be reissued, but I had to hear more about it before I would consent to it. But finally they made me consent, and put an article in that agreement, which you can all see, that it should be reissued, and would have done so had not Mr. George Harding and the other patent attorney said it was not worth while.

Q. Then they did know about it?

A. Of course they did, or they would never have had it inserted in that agreement; and the reason why I did not desire to have any patent reissued was because I had had a patent reissued, and sued a man for damages in the United States Court, and lost over $2,200, just through having the patent reissued, and since I considered it valid, I did not want to have it bothered with.

Re-recross-examined.

By MR. OTTERSON:

Q. Please state where, in your last answer, Mr. Kilburn's statement to you begins, and where does it end?

A. In regard to the reissue of the patents?

Q. You have said that Mr. Kilburn told you something or other, and upon that ground it went in evidence. I want to know what, of all that rigmarole, did Mr. Kilburn tell you?

A. I cannot tell you word for word, but that we signed the contract——

Q. Confine yourself to exactly what you have already said, and tell us what Mr. Kilburn told you.

A. I recollect his telling me about the Stark and Maine patents, and wanting me to have mine reissued, and it continued along so for three or four or five months, and they had Messrs. Harding and Collier examine it, and give their opinions upon my patent, as to its validity.

Q. What did Mr. Kilburn tell you Mr. Howson said about the Stark and Maine patents?

A. Well, he told that I would have to have my patent reissued on account of them patents. He said Mr. Howson said so.

Q. Is that all?

A. That is about all I know of.

Q. When was that conversation between Mr. Kilburn and you?

A. It was between the 12th of April, 1874, and the first of September, as near as I can recollect.

Q. How do you fix those dates?

A. Just merely from memory. If I had the written opinions that we have here of Messrs. Harding and Collier, I could tell the date exactly, because that was the end of it. After that there was never nothing said about it—that will fix it.

Q. In how many conversations between Mr. Kilburn and you did he repeat the substance of Mr. Howson's statement to you?

A. I suppose at least half a dozen.

Q. And extending through that time from April to September, 1874?

A. Extending from the 12th of April up to the time that
175 we had Mr. Harding make a thorough examination and give his written opinion in regard to its validity.

Q. I have called your attention expressly to the subject because I expect to call Mr. Killburn in reference to the same point; did you ever have any such conversation in the presence of any other person?

A. We might have had.

Q. Do you know whether you had or not?

A. I cannot say positively.

Q. Did you ever have any conversation on this subject with either of the three Mr. Hales?

A. I do not think I did; I might have had.

Mr. BOWMAN: If you want to make any explanation about any of your testimony of the recross-examination you may make it.

The WITNESS: In making the original agreement both Mr. H. S. Hale and Mr. Curtis told me that any business I done with Mr. Kilburn would be satisfactory to all—the whole of the parties; that he would be the one that I would have to transact my business with, and the only one; so that whenever I had anything of any importance to do I done it with him, as he would have to be consulted finally anyhow before anything could be done.

By Mr. OTTERSON:

Q. You say you were never requested to participate in the purchase of the Maine and Stark patents until after they had been purchased by the Hale-Kilburn Manufacturing Company; is that so?

A. I never was until the 10th of May—between the 10th day of May and the 10th day of July, 1878—never till then, and then I was; but they wanted me to buy it all myself and turn it over to them—give five of my seven per cent. for Stark's patent and turn it over to them. Mr. Kilburn told me if I would do that he would arrange the matter satisfactorily.

Q. Your attention is called expressly to the subject because I expect to call other witnesses to the same point; do you say you never were consulted or asked to participate in the purchase of the outstanding patents?

A. Never asked to participate or co-operate with them in buying any patent until the 10th of May and after.

Mr. BOWMAN, to the master: In answer to several calls made by the plaintiff the defendants have produced several documents, which have been offered in evidence by us; but I understand that they object to leaving them in your possession. I would ask that they be put with the other exhibits and the other papers in the case.

The MASTER: I do not think I have the power to compel them to leave them.

The plaintiff closes, reserving the right to call another witness at the next meeting.

Adjourned until Tuesday next, May 20, 1879, at 3 p. m.

PHILADELPHIA, *Tuesday, May* 20, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt; Mr. Legrand Ensign, representing Mr. Otterson, and Mr. H. S. Hale.

Mr. BOWMAN: We have closed our case.

Defendants' Case.

Mr. ENSIGN: The defendants propose—

First. To show that the report submitted to the master as having been made from their books by the plaintiff's expert is utterly unreliable because it charges as sales and makes the basis of a liability both the order book and the sales book entries and for other reasons.

Second. To show that the account submitted by the defendants in answer to the plaintiff's call is correct.

O. D. ROBERTS called and examined.

By Mr. ENSIGN:

Witness produces memoranda.

176 Q. Have you examined the report you have presented?

A. I have examined part of it, as far as we have been able to go.

Q. Did you find it correct?

A. No, sir.

Q. In what respects is it incorrect; what are the discrepancies?

A. In many respects; it has many discrepancies.

Q. Please state them.

A. We have quite a list here of discrepancies.

By Mr. BOWMAN:

Q. What is the list taken from?

A From the accounts of the plaintiffs.

Mr. BOWMAN: I would rather that the books be produced and the discrepancies pointed out from them. I object to the witness stating from the memorandum.

To Mr. ENSIGN: We have submitted an account which we contend is correct. I understand your position to be that it is not correct, and you propose to show wherein it is erroneous; the only legal way to do that is by turning to the books themselves and pointing out the errors and mistakes.

Mr. ENSIGN: I was under the impression that the books were here, but I find that they are not.

Adjourned until Monday next, May 26, 1879, at 3 o'clock.

PHILADELPHIA, MONDAY, *May* 26, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt.

On account of the absence of Mr. Otterson, adjourned until tomorrow (Tuesday), May 27, 1879, at 3 p. m.

PHILADELPHIA, TUESDAY, *May* 27, 1879.

Parties met at the office of the master.

Present: The master, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

On account of the absence of Mr. Bowman, adjourned until Thursday next, May 29, 1879, at 11 a. m.

PHILADELPHIA, THURSDAY, *May* 29th, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Mr. H. S. Hale.

Examination of OWEN D. ROBERTS resumed by Mr. OTTERSON:

Q. I show you Exhibit No. 5, being the report of the expert employed by plaintiff. (Exhibit handed witness.) Have you examined that report?

A. Part of it.

Q. Is it correct?

A. It is not.

Q. In what respect or respects is it incorrect?

A. In several. He claims on goods not part of the patent; he claims goods never delivered; he claims on goods returned; orders that are duplicated; amounts claimed above the list price; on goods sent to stock our branch stores; and in other respects.

Q. You say goods not delivered?

A. Yes, sir.

Q. Specify some, referring to the page of the report?

A. I find the first entry on page 1 of this report for $40. The article charged there was never delivered to the customer.

Q. In which of your books does the entry occur to which that refers?

A. Order book L.

Q. It is only in the order book?

A. Yes, sir. Order book L, page 456.

Q. Tell us what that order book is?

A. A memorandum of orders given.

Q. And does it imply a sale or charge at all?

A. No, sir.

Q. Point out any other errors of the same kind.

A. In the report of the expert, page 3, they claim a patent folding crib for $60.

177 Q. Where is that entered on your books?

A. On order book K, page 630. That article was never delivered.

Q. Are there any others?

A. On page 6 of the report of the expert he makes a claim on one bedstead and one child's bedstead; amount, $155

Q. Where is that entered on your books?

A. In order book N, page 68. The goods were never delivered.

Q. What comes next; look at the same folio of the report?

A. One bedstead, $82.50. The goods were never delivered.

Q. Where was the entry?

A. Page 631, order book K, p. 3 of No. 5.

Q. What comes next?

A. On page 7 of his report, one bedstead, $50; order book N, page 114; the goods never delivered.

Q. Go on and give us a statement of those errors.

A. On the same page of his report they claim one bedstead, $80, order book N, page 146; goods never delivered. On the same page of the report, another bedstead, same order book and same page, $70; never delivered. On page 10 of his report they claim on one bedstead $50; order book N, page 175; goods never delivered. On page 26 of his report, order book N, page 590, they claim one bedstead, $108; goods never delivered. On page 26 of his report they claim on one bedstead $53.50, order book N, page 529; goods never delivered.

Q. Are there others in the same condition?

A. I presume there are. That is, as far as we have examined the report, up to first January, 1876.

Q. There *one* others still, are there not?

A. Yes, sir; but the order books are not here.

Q. Can you tell what the order book is?

A. Yes, sir; on page 21 of his report he claimed a bedstead, $115; order book O, page 212; goods never delivered. On page 24 of the report, order book O, page 455, one bedstead, $113; goods never delivered.

Q. And none of those order books and entries imply a charge?

A. No, sir.

Q. Do you find entries of debit in that report for articles which had been delivered and were afterward returned?

A. I do.

Q. Will you specify a few of them?

A. Page 1 of his report, a claim on a folding bedstead, 100, found in sales book R, page 216. That bed was afterwards returned to us.

Q. What is the entry of this return?

A. The entry is a credit entry in our journal D, page 399.

Q. What other entry have you on the same page of the report?

A. A folding bedstead, $150, found in sales book R, page 286; the bedstead was afterwards returned.

Q. And credited?

A. Yes, sir; by an entry invoice book D, page 207.

Q. Refer also to page 3, of the report?

A. One crib, $45, found in C. O. D. book, page 290. That was returned.

Q. How does it appear to have been returned?

A. By our usual mark, in lead pencil, "returned, C. O. D. book." On page 4 of the report is an item of $40.50 for one crib, charged on C. O. D. book, page 290, and the return of it entered on C. O. D. book, same page, by lead pencil mark across the face of the copy of the bill. The same $40.50 is a duplicate of the same $45 that we have just spoken of before. Also, on page 5 of the report, an item of $160 for one bedstead, found in order book M, page 131. This bedstead was an exchange for a crib we delivered to this party, and

the difference between the two prices of the crib already delivered and this bedstead was $25, for which we have given the plain-
178 tiff credit in our own account. The arrangement of the difference was made after the order in the order book charging the $160 as the price of the order.

Q. Had you sold the crib?

A. Yes, sir.

Q. Does that appear in the report at all?

A. The crib, the parlor bedstead, as appears in his report, is on page 2 of that report—$75. It appears in his report.

Mr. BOWMAN: Is Mr. Roberts speaking from books, or from his recollection of these itemized instances? He is referring here to various transactions running through a considerable period of time, and I would like to know whether he is speaking from his memory or from books and records in the possession of the defendants?

The WITNESS: In this particular instance I speak from my memory of the transaction.

By Mr. OTTERSON:

Q. You were personally cognizant of it, were you?

A. Yes, sir; I was.

Q. Turn to page 8 of the report, the item of $80.

A. They claim on a single bedstead $80, charged in sales book T, page 69; and the same was returned and credited in our journal E, page 29.

On page 9 of the report one crib is claimed, $57.50, entered in sales book L, page 419; it was returned and credited in journal E, page 261.

On page 15 of the report we find one bedstead, $140, charged in sales book S, page 527; goods returned and credited in journal E, page 44.

On page 21 of the report one bedstead, $55, charged in sales book S, page 639; the goods returned and credited in invoice book D, page 243.

On the same page of the report one bedstead, $140, sales book S, page 668; bedstead returned and credited in invoice book D, page 243.

Page 26 of the report, one crib, $40, foreign order book N, page 572; goods returned and credited in journal E, page 244.

Q. What about duplicates?

A. I find quite a number of duplicates; amount claimed on entries in the order book on the same goods when charged.

Q. Illustrate, please?

A. On page 3 of the report of the expert you will find a bedstead, $150, found in order book K, page 630, which is a duplicate of a bedstead charged in sales book S, page 32, which appears also on page 1 of his report.

Mr. BOWMAN: I must object to this line of examination. I was in hopes it would not last long; but if the books show these facts, I want

them here, so that the witness can refer to them in his examination and point all of these errors.

Mr. OTTERSON: The order books, with one or two exceptions, are here, and all the other books but the journals. I gave directions to have them all here, and supposed they were. Undoubtedly, you have a right to have them here.

To the witness: Do you say in your last answer that an entry from the order book, first copied into the export's report on page 3, from your sales book, is copied in his report on page 1, and that all those entries refer to the same transaction?

A. Yes, sir.

Q. On page 3 of the report is what?

A. One bedstead, $100, foreign order book K, 631, and there is a duplicate of the charge in the sales book S, page 32, and entered into his report, page 1.

Q. Are there any more of that kind of entries?

A. Yes, sir; on page 3 of his report we find one bedstead claimed at $110. Found in foreign order book K, page 631, which is a duplicate of a charge in sale book S, page 61, found in page 1 of his report.

In page 3 of his report there is an entry of one crib, $45, found in order book K, page 631, which is a duplicate of one found in sales book S, page 50, found on page 1 of his report.

179 In the same page of his report, page 3, is a crib, $55, order book K, page 631, which is a duplicate of an entry from sales book S, page 69, found on page 2 of his report.

On the same page of his report, 1 crib, $66, order book K, page 631, which is a duplicate of a charge found in sales book S, page 32, found in page 1 of his report.

On page 5 of his report we find a claim on a bedstead, $100, found in order book N, page 48, which is a duplicate of a charge in sales book S, page 132, which is also charged in his report, page 5, $110.

On page 5 of his report we find a bedstead at $110, found in foreign order book N, page 48, and on page 15 of his report we find an entry of the same bed, sales book S, page 521, and entered there at $95.

On page 5 of his report one bedstead, $100, found in order book N, page 61, which is a duplicate of a bedstead on the same page of his report, page 5, charged in sales book S, page 141.

On page 5 of his report, one bedstead, $85, order book N, page 61, which is a duplicate of an entry in his report, page 14, charged in sales book S, page 496.

On page 6 of his report is a claim on a bedstead, $85, found in order book N, page 68, and the goods were not delivered.

Q. The next item is $70, on the same page?

A. My answer is the same as to the last sum. On page 6 of his report a child's bed at $70, order book N, page 68; goods never delivered.

Q. Page 7, $75?

A. On page 7 of his report, a bedstead at $75, sales book S, page

187, which is a duplicate of a bedstead, page 6 of his report, $100, found in order book N, page 99.

Page 10 of his report, order book N, page 175, an entry of 2 beds, $95 each, and on page 12 of his report is a duplicate of one of those beds at $95, found in sales book S, page 343, that is to be explained, from the fact that one of those beds was shipped at a separate time, and consequently charged separately.

On page 11 of his report we find one bedstead, $120.50, found in order book N, page 247, which is a duplicate of a bedstead, $120.50, page 13 of his report, and found in sales book S, 389.

Page 11 of his report, 1 bedstead, $80, found in order book N, page 269, which is a duplicate of a bedstead, $80, on page 18 of his report, found in sales book S, page 547.

Page 11 of the report, one bedstead, $100, foreign order book N, 287, which is a duplicate of a bedstead, $100, page 13 of his report, found in sales book S, page 407.

Page 12, 1 crib, $40, found in order book M, page 487, the same bed being found on page 12 of his report, sales book T, page 210.

On page 16 of his report, 1 bedstead, $105, found in order book N, page 320, as also in his report, page 15, of the same amount, sales book S, 528.

Page 22 of his report, 1 bedstead, $95, sales book S, page 699, and the same bed on the same page, $95, found in order book N, page 483.

Page 25 of the report, 1 bedstead, $130, found in sales book N, page 779, is the same bed as on page 23 of his report found in order book N, page 516, for the same amount.

Page 25 of his report, 1 crib, $58.50, found in sales book S, page 779, is the same crib, for $50, found on page 23 of his report, in order book N, page 516.

Page 26 of his report, 1 bedstead, $45, found in order book N, page 592, the same bed being found on page 28 of his report charged in sales book S, 866.

Page 28 of his report, 1 crib, $40, sales book S, 831, same crib found on page 26 of his report, $40, foreign order book N, 572.

Page 28 of his report, 1 bed, $55, sales book S, 845, same bed, $55, being 113, found on page 26 of his report, order book N, page 573.

Page 28 of his report, 1 bed, $65, sales book S, 845, the same bed, $65, being found on page 26 of his report, order book N, 567.

180 Q. In each quadruplicate of entries in the list just given is there one or more articles of merchandise referred to or covered?

A. There is the bedstead and spring, as far as I recollect; only the bedstead and the springs are mentioned.

Q. You have given your answers in reference to entries in groups of four, referring to the plaintiff's report, which contains two of each, and the defendants' books, to wit, order book and sales book, as containing two more entries. Do I understand that each group of four refers to one charge, or refers to separate charges; and, if so, to how many?

A. They refer, so far as his report is concerned, to two separate charges.

Q. But are they of different articles of merchandise?

A. They are the same articles of merchandise.

Q. Is it true, then, or is it not true, that, by the entries referred to, the expert has made duplicate charges of the same transaction in each instance?

A. It is true.

Q. Are there any charges in the report of matters which do not pertain to bedsteads?

A. There are.

Q. Will you point out some of them?

A. Yes, sir; on page 2 of his report is a charge taken from order book K, page 619, and is a charge of $5 for boxing a bedstead.

Q. Is that $5 charged anywhere else in the expense account, or anywhere?

A. It goes into what would be our petty cash book.

Q. Go on.

A. On page 3 of the report is a charge from order book K, 632, of $4, for boxing a bedstead. On page 6 of the report there is a charge for a flexible spring, $10, taken from order book N, page 99.

Q. What do you mean by a flexible spring?

A. A flexible spring is a spring bed.

Q. Peculiar to any particular form of bedsteads?

A. No, sir; applied to any bedstead.

Q. Whether folding or otherwise?

A. Yes, sir.

Q. It could be used on the floor, could it not, without any bedstead?

A. Yes, sir; very nicely in the summer time.

Q. Have you any more such entries?

A. In his report, page 7, is a charge for a flexible spring and mattress, $20, found in order book M, page 311.

Q. Is that the same kind of spring as referred to in your last answer?

A. Yes, sir.

Q. What about the mattress; was the mattress peculiar to a folding bed?

A. No, sir.

Q. What was there peculiar about the mattress?

A. Nothing that I know of; an ordinary hair mattress.

Q. A mattress that could be used on any bedstead?

A. Yes, sir.

Q. Or without any?

A. Yes, sir.

Q. On page 8 of the report there is $37; what is that for?

A. On page 8 of their report we find a looking-glass and plate, $25; a flexible spring, $8; and a packing box, $4; making their charge of $37, which sum is found in sales book S, page 228.

On the same page of their report is one flexible spring, $10, found in sales book T, page 40.

On the same page, No. 8, of the report, a flexible spring, $10; found in sales book T, page 55.

On the same page of the report, one spring and mattress, $15; found in sales book T, page 61.

Page 9 of the report, 1 set of springs, hinges, etc., for folding bedstead, $7.50; sales book T, page 123, sold to Mr. E. E. Everitt, the plaintiff.

Q. How was that sold; what was the profit on that sale?

A. That I could not say positively; I should think it was
181 below cost, from the appearance of the charge. I do not know anything about it.

On the same page, 9, of their report, one flexible spring, $10; found on sales-book T, page 136.

On the same page we find a claim for 1 pine bed, 4x4, planed, $30; the real charge was 1 pine board, quarter-inch, planed, 30 cents. C. O. D. book, page 410.

On the same page, 9, of the report, 1 flexible spring, $9; found in sales-book S, page 240.

On the same page of his report, 1 spring, $10, and 1 French-plate mirror, $40; found in sales-book S, page 258.

Page 10 of the report, one flexible spring, $10; found in foreign order-book N, 175.

On the same page, 2 flexible springs, $20; same order book, same page.

On the same page of the report, 5 flexible springs, at $10 each, $50; order-book N, page 175.

On the same page of the report, page 10, 2 flexible springs, at $8.50 each, $17, foreign order-book N, page 175.

Page 11 of the report, 2 flexible springs, $20; order-book N, page 269.

Page 12, one flexible spring, $110; found in city order-book M, page 478.

Page 12 of the report, one flexible spring, $10; found in order-book M, page 581.

Page 12 of the report, one flexible spring, $10; found on sales-book T, page 249.

Adjourned until Monday, June 9th, 1879, at 1 p. m.

The meeting arranged for Monday, June 9th, 1879, was, by arrangement of counsel, continued until Monday, June 16th, 1879.

PHILADELPHIA, MONDAY, *June* 16, 1879.

Parties met at the office of the master.

Present: The master, Mr. Everett, Mr. Otterson, Mr. H. S. Hale.

On account of the absence of Mr. Bowman, adjourned until Monday next, June 23d, 1879, at 1 p. m.

PHILADELPHIA, MONDAY, *June* 23*d*, 1879.

Parties met at the office of the master.

Present: the master, Mr. Bowman; Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of O. D. ROBERTS resumed.

By Mr. Otterson:

Q. Have you any more instances of goods which the plaintiff has charged for which were not delivered.

A. Yes, sir; on page 6 of their report I find, in order-book N, page 68, one bedstead, No. 3, No. 2 finish. This bedstead was not delivered. The price was $85.

On the same page of their report there is an item of $70 for one child's bedstead, No. 3, No. 2 finish. Not delivered.

Q. And both of them charged as debits upon the part of the plaintiff expert?

A. Yes, sir. Then on page 10 of their report I find one bedstead, No. 3 mirror, charged at $150, and a duplicate of the same is charged on page 9 of their report.

Q. That is, the same thing is charged twice?

A. Yes, sir; on page 17 of their report one bedstead, No. 1, veneered, charged at $140, is a duplicate of the same article charged on page 15 of their report, at the same rate.

On page 20 of their report I find one bedstead, No. 1, veneered, charged at $130, which is a duplicate of the same article charged on page 18 of their report.

On page 21 of their report, I find one bedstead, No. 4, charged at $115, which is a duplicate of the same article charged on page 41 of their report at $85.

On page 22 of their report I find one crib, No. 3, veneered, charged at $50, which is a duplicate of the same article charged on page 2 of their report.

On the same page of their report I find one bedstead, No. 7 veneered, charged at $210, which is a duplicate of the same bedstead charged on the same page of their report.

Pape 37 of their report, one crib, No. 1, veneered, charged at $88.50, which is a duplicate of the same article charged on page 41 of their report.

182 On the same page of their report I find one bedstead, No. 7, veneered, charged at $27, which is a duplicate of the same article charged on page 34 of their report, at $20.50.

On page 34 of their report I find one bedstead, No. 10, three-quarter size, charged at $45, which is a duplicate of the same article charged on the same page of their account same amount.

Q. Do you find any articles charged in their account above the list prices?

A. Yes, sir.

Q. Will you turn to some of them?

A. Yes, sir. On page 1 of their report I find a crib charged at $66, which should have been $60, being $6 above the list price.

Q. Can you tell us what that is charged in your book?

A. It is charged at $60.

On the same page of their report I find one bedstead charged at $110 which should have been $100.

On the some page I find a charge for a patent crib, No. 3, at $50, which should have been $45.

On the same page of their report one patent crib charged at $50, which should have been at $45. On page 2 of their report a bedstead charged at $60, which should have been $55.

On page 5 of their report, one bedstead, No. 3, charged at $110, which should have been $100.

On the same page of their report one bedstead, No. 3, charged at $110, which should have been $100.

On page 7 of their report one bedstead, No. 3, three-quarters, charged at $100, which should have been $85.

On the same page of their report one bedstead, No. 3, charged at $110, which should have been $100.

On the same page of their report one bedstead, charged at $100, which should have been $95.

On the same page of their report one crib, charged at $60, which should have been $57.50.

On the same page of their report, one single bedstead, charged at $45, which should have been $35.

Page 8 of their report, one bedstead No. 3, No. 2 finish, charged at $75, which should have been $65.

On the same page of their report one bedstead, No. 3, charged at $100, which should have been $85.

Page 9 of their report, one bedstead, No. 8 finish, with mirror, has $25 included for the mirror in their charge.

Q. Explain the $25 for the mirror. Was the bedstead finished with $25 for the mirror?

A. No, sir; $25 was the list price we charged for the mirror, and is not a part of the bed at all

On the same page of their report one bedstead, charged at $95, should have been $85.

On page 10 of their report one bedstead, charged at $160, should have been $150.

On the same page of their report one bedstead, charged at $100, should have been $95.

On the same page of their report one bedstead, charged at $100, should have been $95.

On page 12 of their report one bedstead, charged at $75, should have been $70.

On the same page of their report one bedstead, charged at $95, should have been $85.

On the same page of their report one bedstead, charged at $155, should have been $140.

On page 13 of their report one bedstead, charged at $150, should have been $140.

On the same page of their report one bedstead, charged at $65, should have been $55.

On the same page of their report one bedstead, charged at $216, should have been $210.

On the same page of their report one bedstead, charged at $100, should have been $90.

On the same page of their report one bedstead, charged at $90, should have been $80.

On the same page of their report one bedstead, charged at $250, should have been $240.

On the same page of their report one bedstead, charged at $150, should have been $95.

183 On page 14 of their report one bedstead, charged at $95, should have been $85.

On the same page of their report one crib, charged at $42.50, should have been $40.

On page 15 of their report one bedstead, charged at $107, should have been $95.

On the same page of their report one bedstead, charged at $80.50, should have been $80.

On page 16 of their report one crib, charged at $77, should have been $75.

On the same page of their report one bedstead, charged at $92.50, should have been $90.

On the same page of their report one bedstead, charged at $75, should have been $70.

On the same page of their report one bedstead, charged at $75, should have been $70.

On page 18 of their report one bedstead, charged at $145, should have been $140.

On page 21 of their report one bedstead, charged at $65, should have been $55.

On page 23 of their report one crib, charged at $58, should have been $57.50.

On page 25 of their report one bedstead, charged at $78, should have been $70.

On the same page of their report one bedstead, charged at $62, should have been $55.

On page 26 of their report one bedstead, charged at $90, should have been $80.

On page 28 of their report one bedstead, charged at $135, should have been $120.

On page 29 of their report one bedstead, charged at $50, should have been $45.

On the same page of their report one bedstead, charged at $54.10, should have been $53.

On page 32 of their report one bedstead, charged at $70, should have been $65.

On the same page of their report one bedstead, charged at $50, should have been $45.

On the same page of their report one bedstead, charged at $92.25, should have been $90.

On the same page of their report one bedstead, charged at $67, should have been $65.

On page 35 of their report one bedstead, charged at $40, should have been $33.

On the same page of their report one bedstead, charged at $250, should have been $240.

On page 36 of their report one bedstead, charged at $100, should have been $95.

On the same page of their report one bedstead, charged at $70, should have been $65.

On the same page of their report one crib, charged at $59, should have been $57.50.

On the same page of their report one bedstead, charged at $85, should have been $75.

On the same page of their report one crib, charged at $60, should have been $57.50.

On the same page of their report one bedstead, charged at $60, should have been $55.

On page 37 of their report one bedstead, charged at $48, should have been $43.

Q. Can you account for these discrepancies?

A. As to how they got the higher figures?

Q. Yes, sir.

A. No, sir.

Q. Do not the higher figures appear in your books?

A. I cannot say, because I have not looked at every one of their items to see if they agree with ours. I only looked to see if they agreed with our correct prices in these matters.

Q. But you know that the sales were at the lower prices that you have given, do you?

A. I do.

Q. How do you account for these discrepancies; you have said that Mr. Hoffman has higher figures in his report than the articles sold for?

184 A. In many instances the mattresses and springs and other articles were charged in a lump price, and in making the reductions on these mattresses and other articles he has not made enough allowance for those articles to get at the correct price of the bedstead.

Q. Did he deduct for the mattresses and springs and other articles at all?

A. He deducted for the mattresses in most cases.

Q. I want you to be sure on that subject, because I understand the plaintiff to be claiming here for mattresses and springs as if they were a part of the bedstead.

A. He claims for springs under all circumstances, but not for mattresses under all circumstances.

Q. And it is by calculating such other matters that he gets the prices too high?

A. Yes, sir.

Q. Are there other charges in that report as if for goods sold, of which your books represent only the transfer of goods from one store to another or branch store?

A. Yes, sir; I find in their report that all goods that are con-

signed to our branch stores on sale are charged in their report as goods sold.

Q. How do those goods which are sold by the branch stores actually get on your books?

A. The goods sold from the stock furnished our branch stores are returned to us by weekly return sales.

Q. How do they get on your books?

A. They are already in memorandum by the bills we send them. We keep with these accounts a merchandise consignment account, and when these goods are returned as sold they are transferred by journal entry in their total to the regular merchandise account on our ledger.

Q. I do not quite get the idea. When you ship the goods to the branch stores you charge them on the books?

A. Yes, sir.

Q. Do they at any time properly represent sales?

A. Those charges? No, sir.

Q. Have you illustrations of such charges in this report which appear to represent sales, but are actual debits to the report?

A. Yes, sir.

Q. Specify them.

A. We find on page 14 of their report charges of goods sent to the New York store, on sale, amounting to $415; on the same page, sent to the same store, $345; on the same page, to the same store, $395.

On page 15 of their report, to the same store, $579.50; same page, $40.

On page 18, to the same store, $78.50, $150, and $205.

On page 19 of their report, to the same store, $522, $522, and $525.

On page 20 of their report, to the same store, $635.50.

On page 21 of their report, to the same store, $510.

On page 22 of their report, to the same store, $115.

On page 23 of their report, to the same store, $210.

On page 25 of their report, to the same store, $103.50; on the same page, $58.50.

On page 28 of their report, to the same store, $417.50; on the same page, $80, and on the same page, $601.

On page 29 of their report, to the same store, $286.

On page 31 of their report, to the same store, $1,890.

On page 33 of their report, to the same store, $632.

On page 34 of their report, to the same store, $628.50; to the same store, $41; to the same store, $255; and to the same store, $133.65.

On page 37 of their report, to the same store, $348.50; to the same store, $380; to the same store, $159.50; to the same store, $190; and to the same store, $141.

Q. Have you examined the returns, account sale, from that store to see how many of those goods were actually sold subsequently, and at what rates?

A. No, sir; I have not.

Q. But the entries referred to do not represent sales in any sense of the word?

A. No, sir.

Q. Down to what period of time was this examination made?

A. Down to the first of January, 1876.

185 Q. From the examinations you have made can you say what is your opinion as to that report as a reliable basis for calculation between these parties?

A. I believe it is not reliable at all.

Adjourned until Monday next, June 30, 1879, at 1 p. m.

PHILADELPHIA, MONDAY, *June* 30, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of OWEN D. ROBERTS resumed:

By Mr. OTTERSON:

Q. Have you examined the statements marked by the examiner Exhibits 1, 2, and 3, being the account of the plaintiff furnished by the defendants under call—have you examined those accounts?

A. I have examined them.

Q. Do you know who made those accounts?

A. Mr. H. S. Hale made those accounts.

Q. He was treasurer of the defendants' corporation, was he not?

A. Yes, sir.

Q. You have compared them with your books which are in evidence here, have you?

A. Yes, sir.

Q. Are they correct, or otherwise?

A. They are correct, with the exceptions noted on the last leaf of Exhibit 1, which is as follows:

S. B. S., 53, Moses, 1 bedstead, $110, less 10, 10, and 5 per cent.	$84 65
C. O. D. book, Hoops, 1 bedstead, $72, less 10, 10, and 5 per cent.	55 40
S. B. S., 228, Penna. R. R., 1 bedstead, ash, to order, $88, less 15 and 10 per cent.	67 32
Amount carried forward	$207 37
Amount brought forward	$207 37
S. B. T., 230, Taylor & Smith, 1 bedstead, ash, 3, $80, less 15 and 10 per cent.	61 20
S. B. S., 581, Moses, 1 bedstead, 0, $55, less 10, 10, and 10 per cent.	40 10
S. B. T., 623, McCarthy, 1 crib, 3 veneered, $50, less 10, 10, and 10 per cent.	36 45
S. B. T., 821, Lippencott, side rails and improvements, $14, less 10, 10, and 10 per cent.	10 21
S. B. T., 871, Gregory, 1 bedstead, 0, $55, less 10, 10, and 10 per cent.	40 10

S. B. S., 876, J. Jones & Son, 1 bedstead, 0, $55, less 10, 10, and 10 per cent.	40 10
O. B. O., 570, Barnes, paid, 1 bedstead, ¾, $45, less 10, 10, and 10 per cent.	32 80
O. B. O. 153, Cheney, paid, 1 bedstead, 3, veneered, $95, less 10, 10, and 10 per cent.	69 25
S. B. T., 78, De Coursey, exchange on bed, $15, less 15 and 10 per cent.	11 47
O. B. M., 601, Cox, paid, 1 crib, veneered, 3, $50, less 10, 10, and 10 per cent.	36 45
O. B. O., 16, Jenks, paid, 1 bed, ¾ pln., $70, less 10, 10, and 10 per cent.	51 03
S. B. B., 189, Dobbins, 1 crib, ¾, veneered, $57.50, less 10, 10, and 10 per cent.	41 91
	678 44
Seven per cent. royalty	$47 49
New York store, 1 Centennial bedstead, $355, less ⅓, 118, 237 per cent.	16 59
	64 08

Q. What do you mean by these exceptions?

A. I mean that these accounts which we put here are accounts of beds sold that, in making the accounts, were accidentally overlooked, and were not included in the first account.

Q. Or not in any account rendered to the plaintiff?

A. Yes, sir.

186 Q. What does this Exhibit No. 1 represent?

A. Exhibit No. 1 represents the account of the bedsteads on which the defendants allow royalty, the sales, and shows the number and price of the bedsteads sold, and the amount of royalty due Mr. Everitt, month by month.

Q. But does not show the payments that have been made whether monthly or otherwise on that account?

A. No, sir.

Q. What does No. 2 show?

A. No. 2 shows the account of the bedsteads, Nos. 10 and 11, that have been made and sold, with the net price, and 7 per cent. royalty.

Q. As contained in your books?

A. Yes, sir.

Q. What are the bedsteads No. 10, 11?

A. Bedsteads No. 10, 11 are bedsteads with a different arrangement, I believe, so far as I understand the patent of Mr. Everitt, with considerable difference between his patent and the patent under which these beds are claimed to have been made.

Q. Has royalty been paid on those bedsteads to Mr. Everitt?

A. Yes, sir.

Q. And does that account represent it?

A. Yes, sir.

Q. Was it correct to pay that royalty or not?

A. I am not able to say from my own knowledge.

Q. Do you know under what patent those bedsteads were made?

A. I believe they fall under the Stark and Maine patent.

Q. Does this account show what royalty was paid upon those bedsteads?

A. No, sir; it does not show the exact amount that has been paid.

Q. What does No. 3 represent?

A. Exhibit No. 3 represents the bedstead No. 11 made and sold—also under the Stark and Maine patent.

Q. What is the difference between that account and No. 2?

A. No. 2 shows different styles of the bedstead; the bedsteads are the same, but the styles are different.

Q. Do you mean to say that in the different accounts the styles of No. 11 are different, or that there is a difference between No. 10 and 11?

A. No; between No. 10 and 11.

Q. What does the account No. 3 represent?

A. That is the only answer I can give; that this account represents the bedsteads No. 10 and 18.

Q. From any particular time?

A. Commencing April, 1878.

Q. And follows in the point of date immediately after No. 2, does it?

A. Yes, sir.

Q. And you cannot tell, you say, without access to the books, how much royalty has been paid altogether?

A. No, sir; I cannot.

Adjourned until Monday next, July 7, 1879, at 1 p. m.

PHILADELPHIA, *July 7th*, 1879.

Parties met at the office of the master.

Present: Mr. Bowman, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

Examination of O. D. ROBERTS resumed by Mr. OTTERSON:

Q. Can you state what payments have been made to Mr. Everitt on account of royalty?

A. Yes, sir; referring to statement. This statement shows the amount of royalty paid Mr. Everitt from time to time from September 4, 1874, up to April 1st, 1878, and also the royalties still due him up to November 1st, 1878; we have the receipts in the receipt book to correspond with the total of the payments.

Mr. OTTERSON: I offer the statement which the witness has been reading from in evidence.

Mr. BOWMAN: I object to it; I do not know what it is; if
187 it purports to be a copy from some original I call for the production of the original.

Mr. OTTERSON: The statement was submitted as a matter of convenience, and for the purpose of saving time. It is now withdrawn,

and we won't proceed with the receipts which the statement refers to.

By Mr. OTTERSON:

(Receipt book handed witness, and he is referred to a receipt.)

Q. What is that?
A. A receipt of November 14, 1874.
Q. For how much?
A. $37.59.
Q. Turn to December 2d.
A. December 2d is a receipt for $50.23, signed E. E. Everitt.
Q. January 6th, 1875?
A. January 6th, 1875, is a receipt for $59.98, signed E. E. Everitt.
Q. February 1st?
A. February 1st is a receipt for $20, signed E. E. Everitt.
Q. February 8th?
A. February 8th, a receipt for $24.71.
Q. March 4th?
A. March 4th, a receipt for $50, signed E. E. Everitt.
Q. March 10th?
A. March 10th, a receipt for $20, signed E. E. Everitt.
Q. April 7th?
A. $95.55; April 10th that should be.
Q. The next is $118.49; what is the date of that?
A. May 10th; $104.71; E. E. Everitt. As I said in my evidence, the receipts in the book do not agree with the totals, for the reason that there were counter-charges of merchandise, etc., which would be deducted from this royalty, and a receipt taken for the balance.
Q. Then those figures do not show the amount of royalty actually paid?
A. Not the actual amount of money paid; I say they do not show the actual amount of money paid. They show the actual amount of royalty, but not the actual amount of money paid, because there were counter-charges.
Q. The balance of that would be merchandise charges?
A. Yes, sir; would be a charge of some kind. It would leave this difference of $104.74, and that occurred in very many cases all through our transactions.
Q. Turn to the charges in these particular cases.
A. I do not know that I can now without having the general ledger of the house. It is not here, and we have not used it in our evidence at all.
Q. But the difference between $104.71 and $118.49 was merchandise?
A. Yes, sir; or let me add to that some counter-charge; I am not positive it was merchandise in each case.
Q. What is the next one?
A. The next receipt is June 3rd, a receipt for $25, signed E. E. Everitt.
Q. The next?
A. June 10th, $68.86, signed E. E. Everitt.

Q. The next?
A. July 10th, a receipt for $47.12.
Q. The difference for merchandise?
A. Yes, sir; $15.57 it would be, if the difference was charged against him.
Q. July account?
A. August 20th, receipt for $19.14, signed E. E. Everitt.
Q. August account?
A. September 10th, $72.46; E. E. Everitt.
Q. September account?
A. October 14th, a receipt for $212.03, signed E. E. Everitt.
Q. October account; is it markep here in pencil, "omitted?"
A. November 15, $118.49, signed E. E. Everitt.
Q. November account?
A. December 22d, $158.93, signed E. E. Everitt.
188 Q. December account?
A. January 10th, 1876, $160.85.
Q. January account?
A. February 29th, $69.53, signed E. E. Everitt.
Q. February account?
A. $50, March 14th, signed E. E. Everitt; March 27th, $82.74, signed E. E. Everitt.
Q. March account?
A. April 10th, $211.62, signed E. E. Everitt.
Q. April account?
A. May 24th, $183.07, signed E. E. Everitt.
Q. May account?
A. June 20th, $196.47, signed E. E. Everitt.
Q. June account?
A. August 11th, $170.91, signed E. E. Everitt.
Q. July?
A. August 11th, $112.17 for July royalty.
Q. Go on without my questioning you.
A. September, $118.54, signed E. E. Everitt.
October 10th, $120, " "
October 11th, $353.64, " "
October 11th, $146.09, " "
October 18th, $30, " "
November 9th, $120, " "
November 10th, $221.31, " "
December 19th, $226.05, " "
January 13th, 1877, $131.60, signed E. E. Everitt.
February 10th, $57.05, " "
March 10th, $99.21, " "
April 10th, $62.06, " "
May 14th, $152.40, " "
May 11th, $25, " "
June 2nd, $25, " "
June 12th, $118.87, " "
July 10th, $114.65, " "
October 16th, $618.51, " "

November 10th, $324.35, signed E. E. Everitt.
December 10th, $214.78, " "
January 10th, '78, $161.80, " "
February 11th, $96.74, " "
March 11th, $85.68, " "
April 10th, $70, " "
April 12th, $116.29, " "

Q. Will you state how you got upon your books from the account sales rendered from the branch stores the merchandise which is contained in consignment accounts which have been referred to?

A. With our branch of stores we keep a merchandise consignment account, and all goods sent for sale at those stores were charged to that account. At the end of each month from the weekly returns from the different branch stores we obtain an account of the goods that were actually sold at those stores, and, by a journal entry, transferred the actual sales from the merchandise consignment account to our regular merchandise sales account.

Q. In the report of Mr. Hoffman is any notice taken of those merchandise sales?

A. Their is not.

Cross-examined by Mr. BOWMAN:

Q. You are the chief book-keeper for the defendants, are you not?

A. I am.

Q. And for how long have you been in their service?

A. Nearly eleven years.

Q. Have you given us of all the corrections in their accounts with Mr. Everitt—you speak of the account of Mr. Everitt—the account which his book-keeper furnishes—being incorrect; I want to know whether you have pointed out all of the errors, and whether you want us to accept the explanation as being correct?

A. All up to January 1st, 1876.

Q. Have you personally made up any account showing the indebtedness of the defendants to Mr. Everitt?

A. Done the actual work, do you mean?

189 Q. Yes, sir.

A. No, sir.

Q. Then you are unable to state of your own knowledge how much the defendants owe him for royalty?

A. No, sir; my knowledge comes from the books; I am able to state the amount from the accounts I have shown in the books of the house.

Q. Have you examined the books yourself?

A. Yes, sir; I have.

Q. Will you state who made up the account showing the defendants' indebtedness to Mr. Everitt?

A. The monthly account I rendered to him?

Q. The one which has been furnished in this investigation, I mean.

A. Mr. Hale made up the account.

Q. Is he one of the firm?

A. Yes, sir; he is the treasurer of the company.

Q. Has he anything to do with keeping the books?

A. He has the superintendency of the office work—general superintendency.

Q. But has nothing to do with the book-keeping?

A. No, sir.

Q. In your examination-in-chief you stated that Mr. Everitt claims on goods not part of his patent; will you be kind enough to state what goods they are?

A. I would mention flexible springs, mattresses, mirrors; that is all I call to mind just now.

Q. Have you ever read his patent and improvements?

A. I think I have.

Q. Do you claim to be an expert on patents?

A. I do not.

Q. Then when you speak of his claiming goods not part of his patent, that is simply your opinion?

A. Yes, sir; my general understanding.

Q. Your opinion and general understanding of patents?

A. Yes, sir.

Q. But you would not pretend to say what his patent covers, nor whether you are correct in that or not?

A. I would not.

Q. Do you know, as point of fact, that Mr. Everitt always claimed he was entitled to royalty upon the very articles which you have mentioned?

A. No, sir; I do not know that he always claimed it.

Q. Except the mattress?

A. I do not make any exceptions.

Q. You do not whether he claimed or not?

A. I say I do know; that my understanding was that he did not claim for those.

Q. Do you remember the model which Mr. Everitt furnished the defendants at the time he made the agreement with them as to his royalty?

A. I do not.

Q. Do you remember seeing it?

A. I do not.

Q. Do you remember the large bed which he made and furnished as a pattern of his patent?

A. I cant't say that I do.

Q. Did you never see it?

A. I cannot say positively.

Q. You say that he claims for goods never delivered; can you give me the amount of royalty which he claims on goods never delivered from the books of the defendants?

A. That amount is made up from the report presented by Mr. Everitt, and I have shown in my examination the goods which he claimed on which have never been delivered.

Q. You spoke of one article, the first one mentioned, for $40, never delived to the customers?

A. Yes, sir.

Q. Have you any personal knowledge of that article?

A. No, sir; I have not.

Q. Will you state how you know that article was never delivered?

190 A. For the reason that on the order book there is not the usual mark of delivery; there was never any charge in our book for that article.

Q. Then you say it was never delivered because there is no mark on the order book showing its delivery?

A. There is not the usual mark of delivery—no charge on the book for that article.

Q. What do you mean—a credit charge?

A. No, sir; a debit charge.

Q. If it had been a cash sale where would your entry be?

A. Our entry would have been a mark of "paid" on the order, and the cash would have been entered in the petty cash-book.

Q. Who usually makes the mark you speak of which indicates the delivery of an article?

A. The city clerk, if a city order; myself, if an out-of-town order.

Q. Did you ever know him to miss any?

A. No, sir; I did not.

Q. Never did?

A. No, sir.

Q. Have you order book "L" here?

A. Yes, sir. (Book produced.)

Q. Refer to page 456: which is this item of $40?

A. (Indicating the item.) "One folding crib."

Q. This is the order book, is it?

A. Yes, sir; this is the order book.

Q. Will you point to the usual mark indicating the delivery of an article?

A. (Witness does so.) It is a cross, straight up and down, and that (referring to another mark) is our usual mark of countermanding an order.

Q. Do you know who made the cross opposite this particular entry?

A. I could not give the name of the party; I know the name of the clerk who was in charge of the book at that time, and I presume it was he.

Q. What does that mark mean (indicating mark in book)?

A. Delivery.

Q. And that (indicating)?

A. Delivery.

Q. Both of them?

A. Yes, sir.

Q. I want you to state the books in which any entries would be made of sales of the Everitt bedstead. You have got your order books here; I want you to state the books into which any entries have been made in that establishment of the sales of Mr. Everitt's bedstead.

A. First comes the order book, then the sales book. If payment was made at the time the order was given the cash entry would be in the petty cash-book, and not go any further than the order book. If the bill was to be charged it would go from the order book to the sales book, from there to the journal, from the journal to the ledger. Cash payments for bills charged would be entered in the cash book, and from there taken to the ledger. I have now mentioned all.

Q. You are speaking of the ordinary business here in the store in Philadelphia?

A. Yes, sir.

Q. What course would they take in sending them to your branch establishment?

A. The order would first be entered in the book which is called the order book of the branch stores, and from there charged to whatever store they were sent to, and the bill copied in our regular sales book. This charge would be transferred to the journal under the head of merchandise consignment account, and from there to the regular store account in the ledger.

Q. Have you order book "K" here?

A. Yes, sir. (Book produced.)

191 Q. In order book "K," page 631, in your examination-in-chief you referred to an order for $155?

A. Yes, sir.

Q. You stated also, in your examination-in-chief, that those goods were never delivered.

A. Yes, sir.

Q. Will you state why you are able to say they were never delivered?

A. For the simple reason that the usual mark of delivery is not made on the order book, and there was no charge of that article in our books.

Q. Do you know who made that cross indicating no delivery?

A. I do.

Q. Please state.

A. There is no mark there indicating no delivery; there is the absence of the cross.

Q. The absence of the crosss means no delivery? I understood you to say that a certain cross indicated delivery, and a certain other cross indicated no delivery.

A. I said the absence of the usual mark of delivery indicates no delivery.

Q. What does this mark mean opposite the first entry?

A. That is the mark of delivery, and billed.

Q. Then where goods were not delivered you made no mark at all?

A. No mark at all.

Q. Can you state why those goods were not delivered?

A. I cannot.

Q. Is not that a mark of delivery opposite the second article—the second entry?

A. I think not.

Q. Is it not a cross just such as you stated indicates a delivery of goods?

A. It is a very faint cross, and, to a man acquainted with this book, would show that it was an error on the part of the clerk getting on the wrong line.

Q. You have no personal recollection about it, have you?

A. I have not.

Q. You cannot say positively whether the mark is there erroneously or not?

A. I cannot.

Q. Then it may mean a delivery and it may not; you are not positive?

A. No, sir.

Q. Then it may mean a delivery and it may not?

A. To me it may not mean anything but a mistake.

Q. To you it may not mean anything but a mistake?

A. Yes, sir.

Q. Yet you would not like to swear that it is a mistake?

A. No, sir; because I have no positive knowledge on the subject.

Q. Taking the other articles in that entry are you able to say that none of those articles were delivered?

A. I am.

Q. Do you base your answer upon the fact that no cross is made opposite to them?

A. That is one reason, and the other is that I have personally examined these entries and find no charges whatever.

Q. In the books?

A. In the books.

Adjourned until Wednesday, July 9th, 1879, at 11 a. m.

The meeting arranged for Wednesday, July 9th, 1879, was, on account of sickness in the family of Mr. Bowman, adjourned until tomorrow at 11 a. m.

192 PHILADELPHIA, THURSDAY, *July 10th*, 1879.

Parties met at the office of the master.

Present: Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Cross-examination of OWEN D. ROBERTS resumed.

By Mr. BOWMAN:

Q. In your cross-examination at your last meeting you spoke of using different marks in your books to indicate the *the* delivery and otherwise of the goods. I would like you to explain the different marks used in keeping the books of the defendants, and what they indicate.

A. I think I explained that the mark of delivery was a simple straight cross made in the folio column of the order books, and the mark we used to indicate that an order was countermanded was a cross with a line running from the corner of the square between the columns in the shape of an x.

Q. Are those the only two marks used in keeping the books to

indicate the delivery or the countermanding of the orders of the goods?

A. Yes, sir; those are the only two marks.

Q. What indicates no delivery of goods?

A. The absence of any mark at all; that would be the indication of the order book.

Q. And these marks were only made on your order books?

A. Yes, sir.

Q. Were they made by any particular person?

A. Usually by the clerks having charge of the different order books.

Q. And you would rely on their accuracy in making them?

A. Yes, sir.

Q. Who adopted this system of making those marks?

A. I did.

Q. Did you ever know them to be used in any other system of book-keeping in any other establishment?

A. No, sir; I never saw them until I used them myself.

Q. In examining the accounts furnished by Mr. Everitt's expert, you referred to the order books to ascertain whether the goods charged in his account had been delivered or not?

A. Yes, sir.

Q. Where you saw no marks you took it for granted the goods had never been delivered?

A. Yes, sir.

Q. And where you saw the marks indicating delivery you took it for granted the goods had been delivered?

A. Yes, sir.

Q. And where you saw the marks indicating that the orders had been countermanded you took them for granted?

A. Yes, sir.

Q. Did you refer, in any instance, to the cash book to see whether any of those goods so marked or indicated as not being delivered had subsequently been delivered and the cash received by the defendants?

A. In all doubtful cases we used every book.

Q. I mean in your examination of the expert's account?

A. Exactly; in all doubtful cases we examined every book to be certain that the article was or was not delivered.

Q. You only did that in cases where you had doubts?

A. Yes, sir.

Q. You could not carry all these items and transactions in your mind. By referring to the order book could you tell positively whether the cash for the goods mentioned there had been received or not, without referring to your cash book or ledger?

A. No, sir; we could not; and in all such cases where
193 the goods were not marked, as I said before, we looked at all the books that would be apt to show whether the goods had been delivered or not.

Q. In examining the account furnished by Mr. Everitt, what period of time did you cover?

A. From the beginning of the transactions with Mr. Everitt up to the first of January, 1876.

Q. And you stopped with January, 1876?

A. Yes, sir.

Q. During that period who furnished the monthly statement to Mr. Everitt?

A. You mean the party; by whom?

Q. Yes, sir.

A. One of the clerks in our office, I think Mr. John Dimmock, during that period made up the account.

Q. Did he make up the statements?

A. I do not know that there were any statesments rendered during that time. He made up the account of bedsteads sold, that was furnished Mr. Everitt.

Q. He was one of the book-keepers, was he not.

A. Yes, sir; he was assistant book-keeper at that time.

Q. Under whose direction did he make up this account?

A. My own.

Q. And where did he get his figures from?

A. From the general books of the concern.

Q. Did Mr. Everitt have access to those books?

A. He could have had it any time.

Q. In making up those statements, will you give us an idea how they were made—did you lump them or itemize them?

A. Itemized them; every bed that was sold.

Q. What prices did you put in, wholesale or retail prices?

A. We put in the net wholesale price.

Q. Will you explain what you mean by the net wholesale price?

A. Yes, sir. We had what we called a list price; from this list price there were given certain discounts through the furniture trade. In getting the net wholesale price we deducted the discounts allowed to the trade, and then from the net price thus obtained figured Mr. Everitt's royalty at the given percentage.

Q. What discounts did you allow to the trade? ten per cent. or more?

A. Different discounts at different times. Sometimes 15 and 10; at one time 10, 10 and 5; at another time 20 and 5; at another time one-third, or 33 and one-third per cent.

Q. What would regulate the rate of discount?

A. Our arrangement with the trade.

Q. That is, the defendants would make any discounts they pleased with the trade?

A. Yes, sir.

Q. And whatever discounts they made you deducted, and then from that net sum allowed Mr. Everitt the royalty?

A. Yes, sir.

Q. From whom would you get the rate of discount?

A. From the heads of the firm, in the first place.

Q. Would the entries in the books of account show the discounts you had allowed the trade?

A. Yes, sir.

Q. Supposing you would sell the trade a bedstead $160, what entry would you make upon your books of the price as to figures?

A. Do you mean the sales books?

Q. Yes, sir.

A. The entry would be the party—to whoever it was furnished—to the firm, for one bedstead, of whatever style, and numbered
194 so much, list price $150, less whatever the discount that might be prevailing at that time. That would leave a sum, subject to a cash discount, changing at different times, and if that bill was paid within a certain limited time they would be allowed the cash discount; if not paid within that time, they would have to pay the bill net, as it stood, with the discount off, as I mentioned in the first place.

Q. And that would appear on the sales book?

A. That would appear on the sales book.

Q. And that would be in a sale where you gave credit?

A. Yes, sir.

Q. How would the figures appear in a cash transaction?

A. The figures would appear at the perfectly net figures on the merchandise cash book—the petty cash book, as we call it in our business.

Q. Would they not appear on the order book?

A. The net figures? No, sir.

Q. What figures would appear on the order book?

A. The gross or list price.

Q. Were the discount rates generally published in the circulars and advertisements of the firm?

A. No, sir.

Q. Were they published at all?

A. Yes, sir.

Q. Is that one of them?

(Exhibit No. 9 shown witness.)

A. That is.

Q. Is not the rate of discount published there?

A. This is one rate of discount.

Q. Of your own knowledge did you ever know that rate of discount mentioned on that circular to be had?

A. Yes, sir.

Q. In making up your statements for Mr. Everitt did you, in any instances, only deduct the discount of 10 per cent.?

Mr. OTTERSON: I object to that, because the statements are in existence and in writing.

Mr. BOWMAN: I call for the production of those statements. I am referring to the statements made up by the clerks back previous to 1876?

Q. Will you explain to me the difference between a statement and an account?

A. According to the understanding of a statement here, rendered to Mr. Everitt, it has been a copy of the account we made and pre-

served at the office. That has been the understanding of the statements rendered Mr. Everitt.

Q. That is your understanding?

A. It is my understanding. Of course I do not know how other people understand it.

Q. Were not these accounts which you say you furnished him up to January, 1876, statements of the goods which you sold under his patent and improvement?

A. Yes, sir.

Q. My question is: In making those statements, did you ever allow him as small a discount as 10 per cent.?

A. No, sir.

Q. You always deducted from his figures more discount than that?

A. Yes, sir.

Q. Why did you do that?

(Objected to by Mr. Otterson because it is a cross-examination of the witness with reference to the contents of written papers which are in existence and can be produced.)

A. Simply because it was our lowest wholesale price.

Q. Then you published one rate of discount to the world and had another in making your settlements with Mr. Everitt?

A. No, sir; we did not do anything of the kind.

Q. Why, you had a rate of discount, which was 10 per cent., between the commencement of these transactions between the plaintiff and the defendants, up to January, 1876, had you not?

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A. We had one rate of discounts to a certain trade.

Q. Then why did you deduct a greater sum from Mr. Everitt in making your settlement with him?

A. Because it was not our lowest wholesale price.

Q. Have you any discount sheet of your lowest wholesale price?

A. I have not here.

Q. Can you produce any, showing what it was between the periods referred to?

A. No, sir; I do not think I can.

Q. Do you know P. P. Gustine?

A. Yes, sir.

Q. Did your firm sell these goods to him?

A. I do not know what those goods are.

Q. The goods we are speaking of here; no others.

A. I cannot speak from personal knowledge.

Q. Is sales book "C" here?

A. Yes, sir; I think it is.

Q. Will you refer to it?

A. Yes, sir.

Q. I mean sales book C No. 2.

A. No, sir; it is not here. It does not cover the time we have examined.

Q. Do you know the firm of Swan & Clark?

A. Yes, sir.
Q. Did they purchase the Everitt bedstead from the defendants?
A. I cannot say positively.
Q. Have you sales book No. 12 here?
A. No, sir; not No. 12.
Q. Have you the book covering the sales of September 12, 1876?
A. No, sir.
Q. Do you know D. M. Karcher & Sons?
A. Yes, sir.
Q. Did the defendants sell the Everitt bedstead to them?
A. I think they did.
Q. Have you sales book C No. 1 here?
A. No.
Q. Do you know Messrs. Cameron & Webber?
A. Yes, sir.
Q. Did they also buy the Everitt bedstead from the defendants?
A. I cannot say positively.
Q. Do you know the Herndon Furniture Company?
A. Yes, sir.
Q. Did they purchase the Everitt bedstead from the defendants?
A. I cannot say positively.
Q. Have you the sales book here covering September, 1876?
A. No, sir.
Q. Do you know H. Kampe & Co.?
A. Yes, sir.
Q. Did they purchase the Everitt bedstead from the defendants?
A. I cannot say positively.
Q. Have you the sales book covering December 8, 1874, here?
A. Yes, sir.
Q. Will you be kind enough to refer to it, at the entry of December 8, 1874?
A. After examining the sales book I do not find any charge against H. Kampe & Company on that date, and this is the only sales book in which those bills were charged during that month.
Q. Do you know Mitchell & Rummelsburg?
A. Yes, sir.
Q. Did they purchase the Everitt bedstead from the defendants?
A. I cannot say positively.
Q. Do you know Trymby & Cunningham?
A. I do.
196 Q. Do you know Freeman & Miller?
A. Yes, sir.
Q. And also Moore, York & Howell?
A. Yes, sir.
Q. Do you also know Messrs. Allen & Bro.?
A. Yes, sir.
Q. And Messrs. Mench & Sons?
A. No, sir.
Q. Do you know that there is such a firm, and that they did business with these defendants?
A. No, sir; I know no such firm.

Q. Do you know C. B. Mench?
A. Yes, sir; I do.
Q. He trades as a firm, does he not?
A. Yes, sir; he does.
Q. Do you know H. Cramer & Company?
A. Yes, sir.
Q. Do you know A. Barlow?
A. Yes, sir.
Q. All these firms, the names of which I have mentioned, are persons engaged in the furniture business, are they not?
A. Yes, sir, they are.
Q. The wholesale trade?
A. Yes, sir.
Q. And some of them, you know, dealt with the defendants, and purchased the Everitt bedstead and improvements from them?
A. On that I have mentioned; the others I cannot say positively.
Q. Will your books show whether the defendants dealt with them or not?
A. Yes, sir.
Q. Do you know what discount was allowed to the various firms I have mentioned in their purchases of the Everitt bedstead from the defendants?
A. I think the discount has been 10 per cent. and 5 per cent. cash to those parties named, who do business in this city.
Q. You are sure about that, are you?
A; I think I am.
Q. Then, will you explain why these defendants deducted from Mr. Everitt 25 per cent.?
A. Simply because the discount deducted from Mr. Everitt was the lowest wholesale price.
Q. How was it the lowest wholesale price if you only allowed to the wholesale trade 10 per cent. off?
A. Because we have different rates of discount to the city and the outer town trade.
Q. I am only speaking now of those persons to whom you allowed 10 per cent. only—and yet you deducted from Mr. Everitt 25 per cent. I want to know why you did that, and upon what prinple you could do it?
A. We deducted the discount because we were instructed by the firm that the lowest, or, as it might be called, the best wholesale discounts, were to be deducted in making up the accounts made with Mr. Everitt.
Q. This best or lowest discount you referred to, was not that allowed to the branch stores and to special agents of the defendants?
A. Yes, sir.
Q. That was a special arrangement made between the defendants and their special agents?
A. That is what we considered the best wholesale price.
Q. And that was based upon special arrangements made between the defendants and their special agents?
A. Yes, sir.

Q. And you took that basis for your settlements with Mr. Everitt?

A. We did not always deduct the largest discount allowed to special agents.

Q. That is hardly an answer to my question. Did you not take that basis upon which to do business with your special agents and regard it as your lowest wholesale price, and settle with Mr. Everitt upon that basis?

A. Yes, sir; with the exception of one instance.

197 Q. Then, where you sold to the general trade, and allowed them a less discount than you allowed to your special agents, still in making your settlements with Mr. Everitt you deducted from him the largest?

A. Yes, sir; always.

Q. Then you had two rates of discount; a large rate for your special agents and your own stores, and a smaller rate for the general outside trade?

A. Yes, sir; we have had three or four rates.

Q. Do not you know that Mr. Everitt objected to having the large rate of discount deducted from his accounts in settlements for his royalty?

A. I never had the slightest idea of it.

Q. The effect of that system was to reduce Mr. Everitt's royalty, of course?

A. It made it smaller in amount.

Q. Do you know that there was deducted from Mr. Everitt's settlements thirty-three and a third per cent.?

A. Yes, sir; I do.

Q. Do you know how long these deductions were made by these defendants in their settlements with him?

A. I can tell in a moment (referring to Exhibit No. 10). From the first of October, 1877, down to the last royalty paid him.

Q. Can you mention any instance where the defendants allowed any such discount to the general furniture trade?

A. No, sir.

Q. Do you know of the defendants selling the right to the Pennsylvania Railroad Company to use the Everitt patent bedstead?

A. No, sir; I have no knowledge of it at all.

Q. Do you know of their receiving royalty from the Pennsylvania Railroad Company for the use of it?

A. For the use of two bedsteads that we sold them.

Q. Have you sales book "S" here, and if you have turn to page 19, the entry of January 13th, 1875.

A. (Referring to sales book "S.") The entry says: Pennsylvania Railroad Company to Hale, Kilburn & Co., January 13th, 1875, order No. 1155, one set of castings and springs, for patent folding bedstead, including royalty to use the same, in special car No. 5, $50, per passenger account, F. P. Levan, Altoona."

Q. What was the price of those castings and springs?

A. I cannot say.

Q. Do not you know that they charged Mr. Everitt $7 for them?

A. I do not.

Q. Will not your books show it?

A. Probably they will. I cannot say so from my knowledge of it.

Q. What is that $50 for?

A. Just what I have read.

Q. Is it for royalty?

A. It does not say so here. Royalty is included in that $50.

Q. Did Mr. Everitt ever get any of that $50?

A. I think he got royalty on part of it.

Q. Will you show it to me out of your books?

A. I will try. (Referring to Exhibit No. 10.) I am unable to see from this account whether he ever got royalty on that charge or not.

Q. Have you sales book "B" here?

A. Yes, sir. (Book produced.)

Q. It is marked inside U, page 224, December 14, 1875—what is the entry against the Pennsylvania Railroad Company?

A. "Pennsylvania Railroad Company, December 14, 1875; one French plate, 21¾ by 46¼, $12.20; springs and fittings for one champion folding bedstead, including royalty, car No. 60, $35. Ordered by Enoch Lewis. Royalty on bed now in use on car 180, $25, making a total of $72.20."

Q. Was Mr. Everitt the recipient of his share of that royalty?

A. I cannot say.

198 Q. Will you refer to your books and see whether they show it?

A. (Referring to Exhibit No. 10.) This account does not show it.

Q. If you have sales book C, please refer to page 613, August 3d, 1876, and see if you find a charge there to the New York store.

A. (Referring to sales book "C.") Yes, sir; I do.

Q. What is it?

A. "August 4, 1876, one set patent folding side rails, to order, 6 feet 3 inches long, ash, crib style, including royalty, $15, less 25 cents; net, $25.

Q. Did Mr. Everitt receive his share of that royalty?

A. I cannot say.

Q. Can you show by the defendants' books whether or not he ever did?

A. I do not think that Mr. Everitt got any share of the royalty on those side rails, because I think they were not intended at all for a folding crib.

Q. Do you know of any other instances where the defendants ever received royalties from parties for the right to use the Everitt patent?

A. I do not.

Q. And you are unable to find from the books of the defendants any allowance for payment to Mr. Everitt, for royalty or license to use his patent and improvements, *to* railroad companies; will you be kind enough to look over those statements furnished by the defendants and sworn to as being correct (Exhibits Nos. 1, 2, and 3 shown

witness), and tell me whether they ever made any mention of those items in any of those statements?

A. I find on the last page of said Exibit No. 1 an allowance of royaly on the net sum of $67.32 for an ash bedstead, sold to the Pennsylvania Railroad Company.

Q. What I want you to show me is, any allowances by these defendants to the plaintiff of his one-half, which he is entitled to under his agreement, for the license granted by these defendants to the Pennsylvania Railroad Company, allowing them to use his patent and improvements?

A. I find nothing in these statements of such allowance.

Q. And these are the statements of the defendants' account furnished in this case?

A. Yes, sir.

Q. If you have sales book "B" here, refer to page 514, and see if you find an entry there of one crib, and state the price of it.

A. (Referring to sales book "B.") One crib, No. 316, large, imitation walnut; with a mattress, $10.50; credit by bill of advertising, $10, leaving a balance of 50 cents. Bill paid; marked paid, in blue, in pencil.

Q. Was that carried to your petty cash account?

A. Yes, sir; it was not a folding crib; it was a common stationary crib made by the firm of Kilburn & Gates, 613 Commerce street.

Q. If you have sales book "T" here, refer to it. In your examination-in-chief you refer to an item charged in sales book T, page 110, and you testified that the same was returned and credited in your journal; will you show me any evidence of its having been returned to the defendants?

A. On page 29 of journal "E" I find an entry crediting Mrs. Potts for merchandise returned January 21, 1875, $125.

Q. I want you to explain how you identified the entry in the journal with the charge for $80 made by the plaintiff?

A. The plaintiff, in his account, claims royalty on one single bedstead. Eighty dollars was the price of it. We sold it at $100, claiming the right to sell above our list if we wished, with a flexible spring and mattress at $25, making $125. These were the only goods charged this party, Mrs. Potts, and these were the goods returned and credited, as per the entry explained.

Q. What is the date of the entry in your sales book?

A. January 22, 1875.

Q. What is the date of the entry in your journal?

A. February 27th, 1875.

199 Q. Then you mean to say that she had these goods all that time before they were returned?

A. No, sir; I do not.

Q. Who had them?

A. We had them. They were returned, I should think from the memorandum in the entry, the same day.

Q. Refer to sales-book "S," and see what entry you find of a bedstead at $140?

A. Referring to sales-book "S:" One bedstead, No. 1, veneered, $140, charged against F. M. Holmes & Co., April 30, 1875.

Q. You testified in your examination-in-chief that that bedstead was returned; will you show me the evidence of it?

A. In journal "E," page 244, a credit to Holmes & Co. for one bedstead, charged April 30, 1875, and returned.

Q. What is the date of the entry in the sales book?

A. The date of the entry is April 30, 1875.

Q. And the date in the journal?

A. The date in the journal is October 20, 1875.

Q. A space of six months intervening?

A. Yes, sir.

Q. How were you able to testify that your entry in the journal has any reference to the goods mentioned in the sales book six months before?

A. From the fact that that bedstead was never paid for, but was kept by Messrs. Holmes & Co. for several months without selling, and then they made arrangements with the defendants to return that particular bedstead.

Q. Were they selling these bedsteads to this firm?

A. They sold a few of them.

Q. How is it you remember this particular transaction?

A. Because the book says so.

Q. Does the book show they held it for six months and could not sell it, and then it was returned because of that?

A. Yes, sir; in the ordinary course of book-keeping it does show that.

Q. Will you show it to me?

A. On the sales book is a charge, on April 30, 1875, of a bed, and the journal entry in October is for a bed returned charged to the same parties on the 30th of April, 1875.

Q. Have you any entry on the order book of that transaction—of the sale or order?

A. Yes, sir; in foreign order-book "N," page 366, we find an order entered to F. M. Holmes & Co., Boston, Mass., for a bedstead, No. 1, veneered, $140; one flexible spring bed, $10; and one mattress, $25.

Q. In your examination-in-chief you spoke of the plaintiff in his account having made duplicate charges; will you state what the charge in order-book "K," page 630, is; it is for a bedstead for $150.

A. Yes, sir; the order is an order entered from Haywood Brothers for one patent folding bedstead, $150.

Q. Will you show me the evidence of that being charged twice in the plaintiff's statement?

A. I claim that on page 3 of the account rendered by the plaintiff they duplicate a bedstead, amount $150, as appearing in the books of the defendants, in order-book "K," page 630, and charged in sales-book "S," page 32.

Q. In the order book the entry appears in what shape?

A. "One patent folding bed, $150."

Q. Where do you say any connection appears in the books of the defendants with that item?

A. In sales-book "S," page 32.
Q. What is the date in the order book?
A. November 5, 1874.
Q. And what is the date in the sales book?
A. November 6, 1874.
Q. How is the article described in the sales book?
A. One patent folding bedstead, $150.
Q. Where do you say it next appears in the books of the defendants?
A. It will appear in the journal.
200 Q. Refer to it, please.
A. It next appears in journal "D," page 372, in a bill amounting to a total of $322.89.
Q. Where is the evidence that that item is charged twice in the plaintiff's account?
A. In the plaintiff's account, page 1, it appears once as in sales book "S," page 32, and it is duplicated in the same report, page 3, as taken from foreign order book "K," page 630.
Q. How are you able to say that those two items refer to the same article?
A. For the simple reason that they give the pages of the books in which they are found.
Q. How are you able to say that the entries in your books refer to the same article when the charges are different in the different books?
A. The charges are not different in the different books.
Q. Is it not $150 in the order book?
A. Yes, sir.
Q. Is it not $165 in the sales book?
A. No, sir; $150.
Q. Where?
A. There. (Indicating on the sales book.)
Q. That is $165.
A. No, sir; that is simply a memorandum.
Q. Is not $150 scratched out and $165 added in lead pencil and added up to make the general total?
A. No, sir; it is not.
Q. Will you explain to me why the figures were altered from $150 to $165?
A. I cannot. I presume in arranging prices. It was just in the beginning of the manufacture of these things.
Q. Do you know who altered the figures?
A. No, sir; I cannot say.
Q. Nor can you tell when they were altered, can you?
A. No, sir.
Q. Do you recognize the figures as being those of any of your clerks?
A. I do not; the figures are not altered; there is a memorandum in pencil, but the original figures in ink are the figures used in making the total of the charge.
Q. Are not the original figures in ink, representing $150, crossed

over in ink, and $165 in pencil written on the right hand, inside of the book, right opposite?

A. No, sir.

Q. Why do you say that the original figures are not crossed out in ink?

A. Because the ink does not appear there.

Adjourned until Monday, July 21, 1879, at 11 a. m.

PHILADELPHIA, MONDAY, *July* 21, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

Cross-examination of Mr. O. D. ROBERTS, resumed by Mr. BOWMAN:

Q. At the last meeting you were referring to certain figures in one of the books, and you stated that they were not erased by ink because the ink does not appear there; will you state what they were crossed over with?

A. They were crossed over with lead pencil.

Q. Why are you so sure of that?

A. Because the figures appearing on the outside of the ink figures were made in pencil, and because the lines through the ink figures were erasable by rubber.

Q. Did you not have to remove the paper in order to remove the lines?

A. No, sir.

Q. Not at all?

A. I think not.

201 Q. In your examination-in-chief you referred to certain charges in the plaintiff's account made by his expert as being duplicate charges; did you mention all of the duplicate charges made by the plaintiff's expert in your examination-in-chief?

(Objected to by Mr. Otterson on the ground that the question has been already asked and answered, the witness saying that he only came down to January 1, 1876, and that he had examined the account no further.)

By Mr. BOWMAN:

Q. What I want to know is whether you have given us all of the duplicate charges?

A. I have aimed to do that.

Q. You speak of overcharges being made in the plaintiff's account; will you state what they consist of?

A. Mostly in figuring or claiming on amounts above the list prices of the goods.

Q. Mostly charging above the list prices?

A. Yes, sir.

Q. In making up your account did you not deduct from the plain-

tiff charges for the springs, mattresses, and extra finish on the beds, such as mirrors?

A. Yes, sir.

Q. You did?

A. We did.

Q. And beds that were finished with gold and ebony lined in making up your statement, you deducted those extras also?

A. Yes, sir.

Q. Why did you make those deductions? Were they not all a part of the bed, and did they not go to make up the price of the bed?

A. No, sir; they were extras above the regular price of the bed.

Q. You spoke of different numbered beds; can you tell me how many numbers you had in the trade, in describing the Everitt bedstead and its improvements?

A. I cannot.

Q. Can you give me a few of them?

A. Yes, sir.

Q. Please state what they are.

A. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 22, the numbers that we have used; some of the numbers that we have used in describing the champion bedstead.

Q. Did each of those numbers represent a different price?

A. Yes, sir.

Q. Which represented the lowest price?

A. No. 16, I think.

Q. In making your settlement with Mr. Everitt which number did you take as your basis?

A. We took the numbers that were published in the list prices?

Q. Which number was that?

A. All the numbers. Whenever a bed of a certain number was sold we gave the number; each time we designated a number, and that number was invariably used.

Q. Do you mean to say that whatever number you sold you took the price of that number as your basis for settling with Mr. Everitt?

A. Always.

Q. Which was your highest price number—the best finished bed I mean?

A. No. 12, I think.

Q. Take No. 12 as an instance; what did they sell for?

A. At different times, I think, at different prices, as I recollect the prices.

Q. Give me the average price.

A. For instance, No. 12, three-quarters size, we sold at $170 or $180, I am not certain which; the list price.

Q. What would you return that to Mr. Everitt at?

A. At the list price, less the wholesale discount.

Q. Did you have those made up with mirrors, ebony veneer and gold finish?

A. We had them made up plain, and finished them according to the desire of the customer.

202 Q. Then the price you settled with Mr. Everitt upon was their price in a plain condition?

A. Plain finish.

Q. And any extras that you put on, you gave him no benefit for the extra charges?

A. No, sir.

Q. Did you not sell beds to the wholesale trade with these extra finishing arrangements—with mirrors and ebony and gold finish?

A. I think we did at times.

Q. Then, when you sold such beds to the wholesale trade, you certainly charged more for them than you did in their plain state?

A. Yes, sir.

Q. But in settling with Mr. Everitt you always did it upon the basis of the plain condition of the bed?

A. Yes, sir.

Q. And always deducted the extra finishing?

A. Yes, sir.

Q. Did not these extra touches and finishing sometimes change the value as much as $100 or $200?

A. No, sir.

Q. Well, about how much?

A. Well, a mirror added to the bed would change it—would add to the value $20, to the list.

Q. Would add $20 to the list price?

A. Yes, sir.

Q. Who instructed you to make your statement and settlements with Mr. Everitt in that way?

A. The firm.

Q. The also instructed you to deduct for the springs, did they?

A. Yes, sir.

Q. And they also instructed you to take the lowest wholesale price to their banch stores and special agents as the basis for settlement?

A. Yes, sir.

Q. The bedsteads were always sold with springs, were they not? The Everitt bedstead, I mean?

A. No, sir; they were not.

Q. They were never sold without a bottom of some kind, were they?

A. Oh! yes.

Q. Without any bottom?

A. Yes, sir—except you call the front of the bedstead the bottom.

Q. What I mean is, where the mattress is put on?

A. Yes, sir; we sold them frequently without anything but the front of the bed.

Q. In your examination-in-chief you spoke of the goods being sent to the branch stores; those branch stores are kept by the defendants, are they not?

A. Yes, sir.

Q. In what cities, in this country?

A. New York, Boston, and Baltimore.

Q. And all the profits and losses of those stores are shared by the defendants, just the same as they are in the home stores?

A. No, sir; except in the case of the New York store.

Q. They are all borne by the defendants, except in the case of the New York store?

A. No, sir; I say they are not. I say they are not borne by the home firm, except in the case of the New York store.

Q. How are the losses and profits borne in the other stores?

A. By the agent who has charge of the store.

Q. Does he simply bear the losses?

A. No, sir.

Q. What does he do?

A. The goods are furnished him for stock at a certain price. He sells them for what he pleases, and what he gains is his, and what he loses is his.

Q. All he has to account to the firm for is the price they are billed to him at?

A. Yes, sir.

203 Q. But in the New York store, whatever the goods are sold for the defendants get the benefit of?

A. Yes, sir.

Q. Or the loss, as the case may be.

A. Yes, sir.

Q. Then, no matter what discount the defendants might deduct from goods billed to the New York store, they would get the benefit of the price the goods were sold at, no matter what it might be?

A. Yes, sir.

Q. Had the defendants any rule of discount in billing goods to their New York store?

A. Yes, sir.

Q. What was it?

A. One-third from the net price.

Q. That is 33 and one-third per cent.?

A. Yes, sir.

Q. And that is the basis upon which they settled with Mr. Everitt?

A. Yes, sir.

Q. It did not affect the defendants either way, no matter what discount they made on those goods; the defendants lost nothing by it. That is, they might have made the discount 50 per cent. as well as $33\frac{1}{3}$?

A. Oh, we have a regular percentage to our branch stores, and the New York store was allowed precisely the same as the other branch stores.

Q. And you allowed the same percentage to all the branch stores?

A. Yes, sir.

Q. And the special agents in the employ of the defendants who were selling goods?

A. No, sir; those are the only three places they get that discount.

I would like to add to that answer, with the exception of our agency in Pittsburgh.

Q. Supposing a bedstead was sent to the New York house at $100; the discount would be 33⅓ per cent.?

A. Yes, sir.

Q. And if the New York house should sell it for $150, would Mr. Everitt get the benefit of that?

A. He would not.

Q. Then you did not return to Mr. Everitt the prices the beds sold for?

A. Never.

Mr. OTTERSON to Mr. BOWMAN: If you read the contract between these parties you will find, I presume, that the defendants were under no obligation to make the reports you seem to be enquiring for.

Mr. BOWMAN: My answer to that is that the contract expressly calls for the prices for which the goods are sold.

To the WITNESS: Will your books show what the branch stores sold the goods at?

A. No, sir.

Q. Then, I understand you to say that the defendants would send goods, the Everitt bedstead, and the improvements thereon, as manufactured by them, to their own stores, to be sold for their own benefit, and would fix a rate of discount, 33⅓ per cent., which was 15 and 20 per cent. higher than was allowed to the general wholesale trade, and those goods would be sold at their own stores for their own benefit and profit, and they would take that rate of discount, arbitrarily fixed between themselves, and deduct it from Mr. Everitt, and have it as their basis of settlement of his royalty with him?

A. I have not said so.

Q. Will you state wherein my question differs from the facts which you have given to us?

A. Yes, sir.

Mr. OTTERSON: I object to the witness being cross-examined in this manner, for he may omit a single paragraph or point of the question and would be held to have admitted it for not denying it.

Mr. BOWMAN: Mr. Roberts is an intelligent witness, and competent to answer any question I may put him on this subject; but if he needs any enlightenment on any branch of my question I shall be very happy to give it to him.

204 The WITNESS: That is a very long question; yet my evidence goes to show that I have not admitted anything that Mr. Bowman proposes now to make me admit.

Mr. BOWMAN: I want an answer to my question. I ask that question again.

Mr. OTTERSON to the witness: If the question is not intelligible, or in the form in which you can answer it safely, you have a right to refuse to answer it.

By Mr. BOWMAN:

Q. I repeat my former question?

A. My answer is the same; that I have not said any such thing.

Q. That is your answer?

A. Yes, sir.

Q. Did you not say that the New York store was a branch store of the defendant's?

A. I did.

Q. Run by them, and the profits and losses of the store shared by them?

A. Yes, sir.

Q. And did you not say that goods which they billed to that store they allowed a discount of 33⅓ per cent. on?

A. Yes, sir.

Q. And did you not say that they deducted that per cent. from Mr. Everitt in settlement with him?

A. Yes, sir.

Q. And did you not say that if goods were billed to the New York house at $100, they would deduct 33⅓ per cent. from that in their settlement with Mr. Everitt?

A. Yes, sir.

Q. And that if they were sold by the defendants in their New York store at $150, Mr. Everitt would get no benefit of the extra $50?

A. Yes, sir.

Q. And this percentage or discount of 33⅓ per cent. between their own stores, they fixed themselves?

A. Yes, sir; of course. They fixed every other discount.

Q. Mr. Everitt had no say about it, and they always had that basis, 33⅓ per cent., as the basis of settlement with him?

A. Yes, sir.

Q. Can you give me any instance of their dealing with outside general public wholesale trade where they allowed any such discount?

A. I cannot give you any instance.

Q. Will you state the highest discount they ever allowed to the general wholesale trade?

A. We have one customer, one wholesale customer, to whom we give a discount of 40 per cent. of the list prices; we have given him as high as 43.

Q. That is one wholesale dealer, is it?

A. Yes, sir.

Q. Who is he?

A. The Tobey Furniture Company, of Chicago, Ill.

Q. Is he a special agent of the defendants?

A. Yes, sir; he is the agent for the sale of this bed in Chicago.

Q. They made that special arrangement with him?

A. Yes, sir.

Q. How long has that arrangement with him been in existence?

A. I think something like 18 months at that discount, or about that.

Q. My question was, will you name the highest rate of discount allowed by the defendants to the general wholesale trade, not their special arrangements with a special agent?

A. The general discount with the general furniture trade is 20 per cent. from the list prices, and five per cent. for cash.

Q. That is the highest?

A. That is the general discount for the general furniture trade.

Q. Is that the discount allowed to the general trade in this city?

A. No, sir; it is not.

205 Q. What is that?

A. The discount to the furniture trade in this city is 10 per cent. from the list price, and five per cent. for cash.

Q. You mean to say that the defendants have not sold goods to the general trade outside of the city for 10 per cent. discount off?

A. Not in late years; they may have done so in the beginning of the transaction; I do not recollect. The discounts have varied many times.

Q. They may have done so the first few years?

A. I do not know whether they have done so or not; I cannot say from positive knowledge.

Q. How many agents have the defendants to whom they allow such a discount of forty per cent. and over?

A. They have but one.

Q. You spoke in your examination-in-chief of goods charged in the plaintiff's account, as made up by his accountant, which were sent to the New York store, amounting to various sums. You stated that the entries as to those goods did not represent sales. Can you say whether or not all of those goods so entered have been sold?

A. I cannot.

Q. Did the defendants keep any separate books of the goods sent to their branch stores?

A. Order books; yes, sir.

Q. Did they keep any other separate books?

A. No, sir.

Q. Did they keep any separate book or books to represent their dealings with Mr. Everitt?

A. Only the book that has been put in here as an exhibit of his account.

Q. Where were the figures taken from which make up that book?

A. They were taken from the sales books.

Q. From the general books of the firm?

A. Yes, sir; you are speaking now of the general account?

A. Yes, sir; it was simply a summary of the business of the firm in relation to his bedstead, as it appeared upon the books of the firm?

A. Yes, sir.

Q. The entries in the separate book were not made as every bedstead was sold or shipped?

A. They were taken from the charges of the different bedsteads

Q. Were the entries in the separate book just as they appeared upon the general book of the firm?

A. The accounts were—the discount and number of the bedstead; probably the copy of the bill was not given, but the figures were all there.

Q. But there is not sufficient description of the article to enable you to identify it with the article described in the general books?

A. Yes, sir; in every case.

Q. Have you got that book here?

A. Yes, sir. (Book marked No. 10 produced.)

Q. Whose handwriting is this book in?

A. In the handwriting of Mr. John Bimmock—the part at which you are looking now.

Q. Have you the New York returns here?

A. Yes, sir. (Book produced.)

Q. I want May 8, 1875.

A. The returns of New York?

Q. Yes, sir.

A. (Referring to book.) May 8, 1875.

Q. What are the entries May 8, 1875? Is there an entry of "One crib, No. 3, plain, and mattress?"

A. You mean on the statement of the New York store?

Q. Yes, sir.

A. Yes, sir.

Q. What is the price of it?

A. Fifty dollars.

Q. That was the price; fifty dollars?

A. Yes, sir.

206 Q. Can you tell me upon what figures they settled with Mr. Everitt on that crib?

A. They settled at the basis of $40, list.

Q. What number have you got in your books?

A. No. 3 plain.

Q. Will you refer to the New York list of the same date and say if there is an entry of "One bed, No. 3, veneered, and springs?

A. No. 3; yes, sir.

Q. What price have you got?

A. One hundred and twenty dollars.

Q. What return did they make to Mr. Everitt of that sale?

A. Ninety-five dollars, list.

Q. Do you mean they allowed him royalty on $95?

A. No, sir; they allowed him on $95, less the discount of 10, 10, and 10.

Q. That is, they allowed him royalty?

A. Of the net sum, after deducting 10 per cent. and 10 per cent. and 10 per cent. from $95.

Q. That would leave how much?

A. That would leave $69.25 net.

Q. And that bedstead was sold or billed to the branch store, New York store, at $120?

A. No, sir; sold at that.

Q. It was sold by the branch store at $120, returned to Mr. Everitt at $95 net, from which 30 per cent. was deducted, leaving a principal of how much?

A. $69.25.

Q. Upon which they allowed him royalty?

A. 30 per cent. was not deducted from $95; 10, 10, and 10 is considerably less than 30 per cent.; 10 per cent. off, then 10 per cent. off of that, and 10 per cent. off of that; there is quite a difference between that and 30 per cent.

Q. Turn to May 20 of the New York returns.

A. (Referring to book.) Yes, sir.

Q. One bed, No. 3, veneered, and springs; have you that?

A. Yes, sir; we have that entry.

Q. What did the articles sell for?

A. They sold, together, for $117.50.

Q. Sold by the defendants?

A. Yes, sir; at the New York store.

Q. What return did they make to Mr. Everitt?

A. $95; the same as the other.

Q. What figures did they allow Mr. Everitt royalty on?

A. $69.25.

Q. Will you turn to the return sales of New York of October 2, 1875?

A. (Referring to book) October 2d.

Q. Have you there "One bed, No. 1, spring;" have you returned that?

A. "One bedstead, No. 1, and springs;" yes, sir.

Q. What was that sold for?

A. $150 for the two articles.

Q. What did you return it to Mr. Everitt at?

A. That is returned to Mr. Everitt at $140, list.

Q. Did they settle with him upon that basis?

A. The basis of $102.06 net.

Q. They settled with him upon the basis of $102.06 net; how much did they deduct from that?

A. 10, 10, and 10.

Q. Mr. Everitt received royalty upon how much?

A. Upon $102.06.

Q. Turn to the same date; have you an entry of "One bed, No. 3, plain?"

A. Yes, sir.

Q. What was that sold for by the defendants?

A. For one No. 3 bedstead and spring, $100 for the two articles.

Q. Upon what sum did they allow Mr. Everitt royalty?

A. $80; that is, $80 list, $58.32 net.

Q. I want to know the sum upon which they allowed him royalty.

A. $58.32.

Q. Turn to September 20th, the same year.

A. (Referring to book.) September the 20th.

207 Q. Have you a return there of three bedsteads No. 1?

A. September what have you there?

Q. September 20th.
A. We have not any statement of that date.
Q. Have you of the 26th?
A. No, sir.
Q. Is it November 20th or 26th?
A. November 20th.
Q. Have you a return there of "2 bedsteads, No. 1, and springs, $310?"
A. No, sir.
Q. No such return?
A. No, sir.
Q. Have you any return of September 18th from the New York store?
A. (Referring to book.) September 18th; yes, sir.
Q. No such return?
A. Yes, sir; we have a return of September 18th.
Q. Have you "2 beds, No. 3, plain, and springs, $193.50?"
A. Yes, sir.
Q. What were they sold at by the defendants?
A. $193.50 for the four articles.
Q. In your account with Mr. Everitt, what are they returned at?
A. At $80 each.
Q. And upon what amount did you allow him royalty?
A. $58.32 each.
Q. Have you on the same return "one bed, No. 1, plain, and spring?"
A. We have "One No. 1 bedstead and spring."
Q. What was that sold for by the defendants?
A. $160 for the two articles.
Q. In their account with Mr. Everitt, what do they return it as—what figures do they return it at?
A. $140.
Q. Upon what amount did they allow him royalty?
A. $102.05.
Q. Do you mean they allowed him royalty on that sum, or did they first deduct 33⅓ per cent.
A. They deducted 10, 10, and 10 per cent.
Q. Then they did not allow him royalty on $102?
A. $102.05.
Q. Deducting 10, 10, and 10 from that?
A. Yes, sir.
Q. And allowed him royalty on the balance?
A. On $102.05; $140 I told you previously, list.
Q. Will you turn to the return sheets, October 9th, 1875?
A. (Referring to book.) Yes, sir.
Q. Have you "One bed, No. 3, and spring?"
A. Yes, sir.
Q. What is it sold at?
A. $112 for the two articles.
Q. In their account with Mr. Everitt, what is it returned at?

A. It is returned at $95, list; royalty paid on $69.20, which is an error against their own house; we paid him too much royalty.

Q. You think if you paid him royalty on $69 for goods sold at $112, the firm paid him too much?

A. I made my answer before.

Q. Turn to October 30th.

A. (Referring to book.) October 30th.

Q. "One bed, No. 0, three-quarters springs, $67.50?"

A. Yes, sir.

Q. What was that bed sold for?

A. For $67.50 for the two articles.

Q. In their account to Mr. Everitt what is it returned at?

A. Returned at $45, list; royalty paid on $32.80, net.

Q. Turn to the return sheets of October 14th, 1876.

A. (Referring to book.) Yes, sir.

Q. Is there a return there of "2 beds, veneered, and springs?"

A. Yes, sir.

Q. What were they sold for?

A. They were sold for $207 for the four articles.

208 Q. What was the price returned to Mr. Everitt in the account with him?

A. They were returned at $90 each, list; $73 net.

Q. Royalty was allowed the plaintiff upon what amount?

A. $72.

Q. Have you the return sheets for August 5th, 1876?

A. (Referring to book.) August 5th, 1876.

Q. Have you a return there of "one crib, No. 3 finish?"

A. Yes, sir.

Q. What was it sold for?

A. Sold for $50.

Q. What price was it returned to the plaintiff at?

A. Returned at $42.50 list, $34 net.

Q. Royalty was paid upon what?

A. $34.

Q. Are these particular instances of sales a fair representation of the manner in which the accounts were made and rendered to the plaintiff?

A. They are.

Q. Have you the return sheets of October 7th, 1876.

A. (Referring to book.) Yes, sir.

Q. Have you a return of "one bed, No. 3, venerred, and springs?"

A. Yes, sir.

Q. What price was it sold for?

A. $98.33 for the two articles.

Q. What was it returned to the plaintiff at?

A. $90 list, $72 net.

Q. On what sum was Mr. Everitt allowed royalty?

A. $72.

Q. Have you the return sheets of July 10, 1878?

A. No, sir; I have no such returns.

Q. I notice in your testimony given in your examination-in-chief

a statement showing the sale of a Centennial bed, $355; do you know what bed sold for?

A. No, sir; I cannot say.

Q. Do you know where these figures came from which you gave in your examination-in-chief—$355?

A. Yes, sir; those came from the returns of the New York store. I can now answer the previous question: One Centennial bed, best mattress and spring, was sold for $425.

Q. What was the price returned to Mr. Everitt?

A. It is not in the regular account; it is in the exceptions. We returned it at $355, list, a discount of one-third; net, $236.67.

Q. On what sum was he allowed royalty?

A. $236.67.

Q. You stated in your examination-in-chief that you went over the account made up by Mr. Hale, which was furnished the plaintiff as being a correct statement of the accounts between him and the defendants; you omitted also a list of errors in that account; will you state whether you compared the account with all the books of the firm?

A. Yes, sir.

Q. Did you go over every item?

A. In the whole account?

Q. Yes, sir.

A. No, sir.

Q. How are you able to say that there are not other errors in that account besides those which you detected?

A. I am able to say that to the best of knowledge and belief, from the manner in which the account was taken at the time, that there are no other errors in the account.

Q. But you did not verify every item; you simply took them as Mr. Hale had them in this separate book?

A. Up to the first of January, 1876, we compared every item in our books.

Q. After that you did not?

A. We took them from the account as we made it during the years of the transactions.

Q. But you did not examine the books as to every item?

A. No, sir.

209 Q. You took it for granted they were correct, as appearing in the separate account with Mr. Everitt?

A. Yes, sir.

Q. Where did you get those errors from? Are they not from the year 1878, which you submitted in your examination-in-chief?

A. (Referring to book.) I do not see any date here at all; they are up to the 1st of Jan., 1876—no date probably at all.

Q. Is not the last entry for a sale made in 1878?

A. Yes, sir; I see that it is.

Q. That was July, 1878; "one bed for $425?"

A. Yes, sir.

Q. For which there was no return made in the account furnished Mr. Everitt?

A. No, sir; there was no return made.

Q. Do you know why that was missed in the account?

A. That was a clerical error as, I understand it.

Q. And if there was a clerical error in July, 1878, as to such a large sale, is it not very probable that there were other clerical errors during the years intervening between 1876 and 1878?

A. I think not.

Q. And, discovering these 15 or 16 errors in the account, you still thought the separate account furnished Mr. Everitt was accurate enough not to require your going over every item to verify it after 1876?

A. I did.

Q. Were there not certain beds, Everitt bedsteads and improvements, upon which the defendants, in making their settlements with Mr. Everitt, allowed him no royalty at all?

A. None that I know of.

Q. In their settlements did they allow him any royalty upon No. 16 bed?

A. I believe not.

Q. Then they did not allow him royalty on all of them?

A. They allowed, so far as my knowledge goes, royalty on all Everitt bedsteads sold.

Q. And improvements?

A. Yes, sir; as far as I know.

Q. Why did they deduct the royalty from No. 16?

A. They claimed it was not Mr. Everitt's patent?

Q. Is that the only exception where they withheld royalty?

A. They have withheld royalty only on beds that they claim are not Mr. Everitt's patent.

Q. What are they? I want to know what number they are.

A. No. 17, I believe; I think that is all.

Q. Nos. 16 and 17?

A. Yes, sir.

Q. And 15 also?

A. No, sir.

Q. They refused to pay him royalty upon those beds because in their judgment they were not his patents or improvements?

A. That was the reason no royalty is figured on those bedsteads, I believe.

Q. Mr. Everitt always claimed his right to royalty on them, did he not?

A. I do not know anything about it. I never heard him claim it.

Q. Was not Mr. Everitt's patent marked on every one of them, the date of it, up to 1879?

A. I do not know.

Q. You do not know?

A. I do not.

Q. You never saw a note upon these very beds—the Everitt bedstead, on which was the date of his patent, March 24, 1874?

A. I never did.

Q. You do not mean to say it is not there?

A. I do not.

Q. You never saw it?

A. I never saw it.

210 Q. You spoke in your examination-in-chief of having a merchandise consignment account?

A. Yes, sir.

Q. Were those accounts furnished the plaintiff with the other books which were given his expert to make his account?

A. They were furnished him because they were included in the charges in the sales books.

Q. Were the books themselves furnished, is my question. Were the merchandise consignment books themselves furnished the plaintiff and his accountant?

A. They were.

Q. Are those books here now?

A. With the exception of the ledger of the firm. Yes, sir; they are here.

Q. The merchandise consignment books?

A. Yes, sir.

Q. Will you show me one of them?

A. Yes, sir; (book produced;) there is one of them.

Q. Is that your sales book?

A. Yes, sir.

Q. Do you call that your merchandise consignment account?

A. No, sir; I say that it contains the merchandise consignment account with our branch stores.

Q. What I want is the merchandise consignment book, not your sales book. Have you the merchandise consignment book here? Were they ever here, or ever furnished the plaintiff and his accountant?

A. They were here, furnished the plaintiff, and are here now—the books showing the goods consigned to our New York, Baltimore, and Boston stores.

Q. Then when you speak of a merchandise consignment account, you mean to say that you meant then a sales book?

A. I mean to say that these accounts are in our regular sales books.

Q. But they are not all consignment accounts?

A. I confess that I do not understand the question at all.

Q. You say that the merchandise consignment account is transferred to the sales book, do you not?

A. No, sir; I say it is transferred from the sales book.

Q. To the merchandise consignment account?

Yes, sir; in the ledger.

Q. Where does your merchandise consignment account appear?

A. The merchandise consignment account appears in the ledger, the main ledger.

Q. Then it does not appear in a separate book?

A. No, sir.

Q. You spoke of having journals; were they furnished the plaintiff in making up his account?

A. I think they were.

Q. Are you sure of that?

A. Well, I cannot say positively. I think they were sent among the other books.

Q. Have you invoice books?

A. Yes, sir.

Q. Were they furnished the plaintiff?

A. Those that were called for were.

Q. Were not all the books called for which show the business transactions of the defendants as to the manufacture and sale of the Everitt bedstead and its improvements?

A. Yes, sir.

Q. The invoice book show, do they not, business transactions relating to the Everitt bedstead?

A. No, sir.

Q. They do not?

A. They do not, except in two cases in which we have shown the book, of the return of some bedsteads.

Q. You have spoken of certain marks which you introduced in keeping the books for the defendants, which, you never knew to be used by anybody else; are you sure you have named all the secret marks you had in keeping those books?

211 A. I do not know of any secret marks at all. I think I have named all the marks by which we determined whether an article ordered is delivered or countermanded.

Q. Were they such marks as would be understood by any professional book-keeper, without special information?

A. I should think not.

Q. Then they were secret, were they not?

A. I do not know that they were secret; they were very simple.

Q. You never gave Mr. Hoffman, Mr. Everitt's book-keeper, any instruction about them, did you?

A. He asked no instructions from me at all.

Q. How did you expect him to understand them unless they were explained to him?

A. I suppose that he took the books, and if he had needed any information he would have asked for it, which he did not.

Q. But how could he know that any such marks out on the margin of the book would require any explanation?

A. Well, if I were going to examine a set of books and found something I could not understand, my common sense would teach me to ask the man who kept the books.

Q. And every little mark you saw about the margin and on the page you would ask what it meant?

A. Why, certainly, if I did not understand it.

Q. Were you not asked to explain, to give all the light you could about these accounts and books?

A. Only by yourself; right here in the office.

Q. These marks you refer to are made in pencil as well as in ink?

A. I think they are in some cases; yes, sir.

Q. Have you got the sales book of September 8, 1876?
A. Yes, sir; out of town or city sales book?
Q. The foreign sales-book; have you got that?
A. (Book produced). I have the sales book, September 8, 1376.
Q. September 26, I mean?
A. September 26; yes, sir.
Q. Have you an entry there of a sale to the Herendon Furniture Company?
A. Yes, sir.
Q. Can you state from the defendants' books what discount is allowed that firm?
A. They were allowed 10 per cent. on that bedstead.
Q. Is that a wholesale transaction?
A. That, I think, was a special transaction on an old-style bedstead.
Q. I do not want to know what you think; I only want what you know.
A. That is all I know.
Q. Then you do not know?
A. No, sir.
Q. What do the books say it was?
A. The books say that it was a sale of a bedstead, No. 5, veneer, spring and mattress, booked at $160, subject to a discount of 10 per cent.
Q. Then the books say nothing about it being a special arrangement, do they?
A. No, sir.
Q. You have no recollection of that particular transaction?
A. I have not.
Q. Have you the sales book November 29, 1876?
A. Yes, sir. (Referring to book). November 29, 1876.
Q. Is there an entry of sale to Mitchell & Rammelsburg?
A. Mitchell & Rammelsburg.
Q. Of what city?
A. The book does not say, but I think of Cincinnati.
Q. What is the entry there—a sale?
A. The entry is a sale of one bedstead No. 7, veneered and ebony, spring and mattress, $336.50; 10 per cent. off, $303.85; boxing $5; $308.85.
Q. The discount allowed is 10 per cent.?
A. Ten per cent.

212 Q. On those sales can you tell me, from the books of the defendants, what discount is deducted from Mr. Everitt in their settlement with him of his royalty?

A. (Referring to book.) Ten per cent.
Q. Just 10 per cent. more than was allowed by defendants, is it not?

Mr. OTTERSON: That is a matter merely of arithmetic; I object to it.

By Mr. BOWMAN:

Q. That is 10 per cent. more than the defendants allowed, is it not?

A. No, sir.

Q. How much more is it?

A. Not any more than the defendants usually allowed them.

Q. Not any more than was usually allowed to Mr. Everitt?

A. No; I mean as the regular discount which he deducted from him; 20 per cent. was deducted from him.

Q. 20 per cent. was the amount deducted by the defendants from Mr. Everitt?

A. Yes, sir.

Q. But what I want to know is the right of the defendants to deduct 20 per cent. when they only allow 10?

A. As I have already answered three or four times, it was not the lowest discount, but the lowest wholesale discount, and that is what we deducted from Mr. Everitt's account.

Q. What right had these defendants to make any discriminations?

Mr. OTTERSON: I object to that; that is a question for the court to settle.

By Mr. BOWMAN:

Q. These defendants always assumed the right of saying what they should allow Mr. Everitt, and you made up your figures accordingly?

A. I do not know anything about it—about their assumption.

Q. Did you not get your directions from them?

A. Yes, sir.

Q. Mr. Everitt was never consulted as to what discount should be taken off, was he?

A. I do not know that he was; I presume he was; he was always satisfied with the settlement.

Q. Do you mean to swear that Mr. Everit was always satisfied with his settlements with these defendants?

A. So far as his dealings with me were concerned, and I always paid him; he never made the slightest objection in any sense of the word to the settlement that we presented to him.

Q. You were not one of the defendants?

A. No, sir.

Q. Then he would not complain to you. Do you mean to say he never made complaint to these defendants about their statements to him?

A. I do not know anything about it.

Q. Do you not know that he refused for a long time to give them a receipt in full, and simply receipted on account for money paid him?

A. I do not know, sir.

Q. Do not your books show that?

A. I think not.

Q. You think not?

A. No, sir.
Q. Will you turn to them and speak positively?
A. Our receipt book will show a receipt in full.
Q. You say that, do you?
A. I can show it to you.
Q. I would like to see them.
A. Look at the latest receipt, signed April, 1878.
Q. I want you to show a receipt in full.
A. You have lots of them in full.
Q. I refer to the last year or two; I am not speaking of the earlier years.
A. The receipts will show for royalty, as per statement rendered.
Q. Royalty as per statements rendered?
A. Yes, sir.

213 Mr. OTTERSON: I object to the further cross-examination of this witness with reference to the contents of written papers; the papers speak for themselves.

By Mr. BOWMAN:

Q. Were there not numerous receipts given during the last year or two simply on account?
A. There were when payments were made on account.
Q. Were they not all, previous to January, 1877, given on account, and will not your books so show?
A. I will have to consult the books before I would answer that question positively.
Q. Well, you can look at them.
A. (Referring to books.) Up to the date mentioned the receipts were all given on account, because there had been no settlement of the account and was not until January 13, 1877, when we settled the account in full, according to receipts we had.
Q. Do you not remember that when that receipt of Jan. 13, 1877, was signed Mr. Everitt refused to sign it, and went away from the store without his money, and came back two days afterwards and said he was obliged to have some money, and still refused to sign the receipt in full, because he was dissatisfied with the account, and the defendants told him that if he did sign it he could go back of it—it was not binding upon him?
A. I cannot remember anything of the kind.
Q. Do you remember Mr. John Noblet and Mr. Kilburn were present when Mr. Everitt went out, and refused to sign the receipt?
A. I do not remember any of those circumstances. I remember more than Mr. Noblet, but not in connection with that receipt.
Q. Did not you then tell Mr. Everitt that the receipt would not be binding upon him?
A. I cannot say that I did.
Q. Do you mean to say that you did not tell him so?
A. No, because I cannot say one way or the other.
Q. You will not say whether you told him or not?
A. No, sir.

Q. Had you not some conversation on the subject or in regard to that particular receipt?

A. None that I know of or recollect to this day.

Q. Do you not know that Mr. Everitt had been complaining for a long while about the manner in which the defendants were treating him in their settlements or accounts?

A. No; I think the only complaint that I can recollect of Mr. Everitt making was that he was entitled to a copy of the sale, over which I had no control whatever and paid no attention to it, except as a matter of friendly intercourse between Mr. Everitt and myself.

Q. Do you remember of his coming there with a book-keeper and wanting to examine the books, and he was refused?

A. Yes, sir.

Q. You remember the secretary of the company refusing to allow him to examine them?

A. Yes, sir.

Q. Was not his desire to examine the books based upon his dissatisfaction with their accounts?

A. I presume it was.

Q. Do you know that the president of the company also afterwards refused to allow him access to the books?

A. Yes. I also gave privilege within two days afterwards to examine them.

Q. Do you mean to say that he told Mr. Everitt two days afterwards he could examine them?

A. I mean to say he told me, and I told Mr. Everitt.

Q. You are sure of that?

A. I am sure of that.

Q. No doubt about it?

A. No doubt whatever.

Q. Have you sales book of September 12th, 1876?

A. (Referring to book.) September 12th.

Q. Have you any entry there of sales to Swan & Clark?

A. I do not find any on that date.

214 Q. Any other dates to that firm?

A. No, sir; I could not tell from these books.

Q. Have you any books here which would show your transactions with that firm?

A. No, sir; the ledger is not here, which is the only one I could turn to readily.

Q. Have you sales-book C No. 1?

A. Yes, sir.

Q. Turn to June 15th, 1876.

A. (Referring to book.) June 15th.

Q. Is there any entry there of sales to D. M. Karcher & Son?

A. Yes, sir.

Q. Are they a city firm, a Philadelphia firm?

A. Yes, sir.

Q. What discount was allowed on that sale to that firm?

A. Ten per cent.

Q. Can you tell me what discount was deducted when the defendants settled with Mr. Everitt?

A. (Referring to book.) 20 per cent. was the discount deducted in settling with Mr. Everitt.

Q. That was in 1876?

A. 1876; yes, sir.

Q. Turn to September 8th, 1876.

A. (Referring to book.) September 8th.

Q. Do you find any account of sales made to Cameron & Webber?

A. Yes, sir.

Q. What discount was allowed on those sales?

A. Ten per cent.

Q. In settling with the plaintiff what discount did the defendants charge him with?

A. 20 per cent.

Q. Have you December 8th, 1874, sales book, city?

A. (Referring to book.) December 8th, 1874.

Q. Have you a sale to H. Kampe & Co.?

A. I do not find any on that day.

Q. Any entry about that date?

A. No, sir.

Q. Moore, York & Howell, November 12th, 1877?

A. No, sir; I do not find it at all.

Q. Do you see any entry there about that time, or have you any other sales book for November, 1877?

A. Yes, sir; I will look at that in a minute. (Referring to another sales book.) No, sir; I do not find that at all; not within a week of that date.

Q. Turn to sales-book "A" 2, November 6th, 1877.

A. (Referring to book.) November 6th charged against Allen & Bro. for one bed, No. 1, 48 inch, spring, and a 1⅝ mattress, $128, less 10 per cent., $12.80, leaving $115.20; that is to a Philadelphia firm.

Q. What discount was allowed Mr. Everitt in settlement?

A. 20 per cent. from $130.

Q. May 17th, 1878, A. Barlow.

A. (Referring to book.) I do not find that in here of that date.

Q. Is there any other book in which it will appear?

A. (Examining another book.) I do not find it in either of the two books.

Q. Sales book, January 28th, 1879, city.

A. The book is not here.

Q. Do you know of your personal knowledge of sales to C. B. Mench & Sons and A. Barlow, both?

A. I think there were sales made, but I could not describe what they were. Barlow, I know we sold him.

Q. Do you know what discount was allowed those firms?

A. 10 per cent.

Q. Do you know what discount was charged Mr. Everitt in settlement?

A. No, sir; I cannot say, because I have no book to refer to.

Q. You have spoken of the different branch establishments car-

ried on by the defendants; which one of those stores does the largest business?

A. The New York store.

215 Q. Does the New York store do as much business as the Philadelphia store?

A. No, sir.

Q. Does the New York store do as much business as all the other outside stores combined?

A. I do not know; I have not figured that up.

Q. Give your judgment about it; the best of your judgment; that is all I want; your general judgment.

A. I should think more than the other two put together.

Q. That is, Boston and Baltimore?

A. Yes, sir.

Q. Those are the only outside stores that you have?

A. We have not but one outside store, as I have already explained.

Q. That is the New York store?

A. The New York store.

Q. That does as much business, you think, as the other two combined?

A. The other agencies; yes, sir.

Re-examined by Mr. OTTERSON:

Q. You had different rates of discounts between the Philadelphia sales and sales outside of Philadelphia?

A. Yes, sir.

Q. Were the city sales and the outside sales of a different or of the same general character—as to whether they were retail sales or wholesale?

A. Well, they were—some of them.

Q. Why have you one rate of discount for city and another for country sales?

A. The low rate of discount was given the city trade in self-protection. By giving them the same discount as out-of-town sales, or out-of-town trade, they could get our retail sales right straight along, and divide the discount with our customers. We were compelled in self-defence to keep their discount down.

Q. Sales to out-of-town houses, then, were to parties who would not compete with your sales at all?

A. Yes, sir.

Q. Were or were not the sales in the city mostly the sales of single articles—single bedsteads, for instance?

A. Yes, sir; mostly one article at a time.

Q. Ordered by a dealer to supply his customers?

A. Yes, sir.

Q. Do you know whether or not these orders were to supply their orders then existing, or whether they were ordered from you in anticipation of future orders?

A. I could not say as to that; it would not appear. We would not know anything about that.

Q. The sales that were made out of town were made partly through what you have called branch stores, which were merely agencies?

A. Yes, sir.

Q. Or consignments?

A. Yes, sir.

Q. And partly through traveling agents?

A. Yes, sir.

Q. What do you mean by the Chicago agency and the Pittsburg agency; do you mean agents of yours whose exclusive business it was to sell these goods—these bedsteads?

A. I mean certain established firms there, one in each city, who made the sale of our goods a speciality, combining it with their regular business.

Q. And what was the arrangement of your house with those agencies as to the number of agencies that they would establish in a place?

A. The agreement with those two agencies that I mentioned was that we should have no other agents for the sale of our goods in those cities.

Q. They were to have the exclusive sale of these bedsteads in those particular places?

A. Yes, sir.

216 Why was so large a discount allowed to the Chicago agency?

A. The main reason was that because of the excessive freight and the long transportation we were compelled to give them that discount, so that they could sell at reasonable figures.

Q. Were the New York and Boston agencies anything more or less than ordinary consignment accounts?

A. No, sir.

Q. Where else did you sell your goods besides the four places named—Boston, Baltimore, Pittsburg, and Chicago?

A. Where else did we make sales?

Q. Yes, sir; throughout the country.

A. In nearly every city in the United States.

Q. How were those sales made?

A. Sometimes by traveling agents; mostly by direct orders from the houses or parties themselves, through the means of our circulars.

Q. Outside of particular parties with whom you made special arrangements?

A. Yes, sir.

B. Were your rates of discount off the list prices, uniform or nearly so?

A. Uniform always to out of town parties, and uniform to city parties.

Q. Only they were different?

A. Different; yes, sir.

Q. The out of town sales were generally larger in amount and as to the number of bargains; they approach nearer to wholesale orders?

A. Well, I cannot say; but they were sold one article at a time, because the articles were expensive, and then the parties would not carry much stock.

Q. Were your settlements with the plaintiff upon the basis of the uniform out of town sales, or otherwise?

A. Do you mean in the matter of discount?

Q. Yes, sir; discount?

A. The matter of discount was figured according to those allowed our agents, our special agents.

Q. In all cases was that so?

A. Yes, sir.

Q. How did those discounts compare with the discounts you generally allowed to the trade outside?

A. Generally a little greater discount.

Q. To what extent would be the difference?

A. Probably 10 per cent.

Q. Between the allowance that you made to your special agents and the allowance that was made to the general trade of the country, outside of your special agents, and outside of any special arrangement?

A. Yes, sir.

Q. You used the word "duplicate" a number of times in your direct examination with reference to, as I understood it, entries in the report made by the plaintiff's expert?

A. Yes, sir.

Q. In reading it, to my mind it is susceptible of applying to two articles—duplicate bedsteads, instead of duplicate entries relating to these; which did you mean?

A. I meant that they were duplicate entries of the same bedstead; relating to the same bedstead.

Recross-examined:

Q. When you speak of special agents of the defendants, do you include the New York branch store?

A. No, sir.

Q. You do not consider the New York store a special agent?

A. No, sir.

Q. From your knowledge of the defendant's business as a professional book-keeper, would it practically make any difference to the defendants in their dealings with the New York store whether they allowed 33⅓ per cent. or 50 per cent. discount?

A. Yes, sir.

217 Q. How would it affect the general result?

A. Because the New York store was supposed to make——

Q. Not what it was supposed?

A. Was, supposed to make a profit over and above a certain cost to them of the articles which they sold. They had nothing to do whatever with the cost of manufacture of these articles. That store sold exactly and only from the cost of the articles to them.

Q. That is your supposition?

A. That is the fact.

Q. Well, the fact. Then how would that affect the general result in the defendants' profits or losses; in other words, could not the defendant charge 100 per cent. discount, and if they sold their bed-

stead at a profit they would realize a profit, would they not? Or if they sold it at a loss, they would sustain the loss?

A. Certainly.

Q. Then, no matter what they fixed the discount at, it was no loss to them, but a loss to Mr. Everitt?

A. Well, I can only offer the same answer that I did before.

Q. Practically, did it make any difference to them?

A. They wanted, of course, to sell at a profit under all circumstances.

Q. And if they sold at a profit they got the benefit of it?

A. Yes.

Q. And they taxed themselves with a high rate of discount?

A. The same as they gave to the agencies of our house.

Q. The special agents with whom they made special arrangements?

A. Yes, sir.

Q. And they took that high rate of discount as a basis of settlement with Mr. Everitt?

A. Yes, sir.

Q. While they were selling a great many goods to the home trade at 10 per cent. off?

A. Yes, sir.

Q. When the defendants would sell goods out of their Philadelphia store, did they also deduct a discount from Mr. Everitt in settling with him?

A. Why, certainly.

Q. That is, they gave themselves a discount there just the same as when they sold from the store in New York?

A. Yes, sir.

Q. And what did they make that $33\frac{1}{3}$?

A. The uniform discount.

Q. $33\frac{1}{3}$?

A. Yes, sir.

Adjourned to meet at the call of the master.

PHILADELPHIA, TUESDAY, *October 14th*, 1879.

Parties met at the office of the master.

Present: The master, Mr. Otterson, Mr. H. S. Hale, Mr. Mitchell, and Mr. Everitt.

OWEN D. ROBERTS recalled and examined by Mr. OTTERSON:

Q. Mr. Hoffman states that page 662 of sales-book "A" is missing. Is that so?

A. (Examining book.) It is.

Q. Also that page 668, in sales-book "C," is missing. Is that so?

A. (Examining book.) It is.

Q. What is the material of those books?

A. Tissue-paper.

Q. And they are copy-books—letter press?

A. Yes, sir.

Q. Can you account for those missing leaves?

A. Only on the general principle that they tear very easily when wet a little. Sometimes it will be done by the corner of the brush, or by lifting suddenly, when right wet. Lifting with oil paper would tear them in a moment.

Q. Can you tell from the postings whether any of the matter is missing?

A. I can.

218 Q. How can you tell?

A. By the journals to which these entries are transferred.

Q. Will you produce the journals, and state what they contain?

A. (Producing journals.) The journal shows consecutive journalizing from page 667 to 669, showing the omission entirely of page 668, under date of September 22nd, 1876.

Q. Both of those pages, 667 and 669, contain entries on the same date?

A. Yes, sir.

Q. These journal entries are on what page of the journal?

A. Page 449, of journal "E."

Q. Is that entry of $10.50 the last entry on page 667 of the sales book?

A. It is.

Q. And is 33.38 the first entry on page 669?

A. It is.

Q. Will you turn to the journal entries from book "A" and state whether you find page 662 missing?

A. It is.

Q. Is there any of the matter missing?

A. None of the matter is missing, only one page of the sales book; page 661 of sales-book "A" is shown in the journal, the last item being $149.33.

Q. Where is that on the journal?

A. Page 661. The first item on page 663 is $5.70, shown on page 193 of journal "A," and is the next consecutive entry in sales-book "C."

Q. The loss of those tissue paper leaves is the result of what—of design or accident?

A. The result of accident entirely.

Q. And you say that none of the matter is lost?

A. None whatever.

Q. Is the loss of sheets in that way a matter of frequent occurrence?

A. It is very unusual, although these are not the only ones which we could show. They are always the result of accident.

Q. Do you know whether there were any wholesale sales to city dealers?

A. What we call wholesale sales?

Q. Were there any that you call wholesale sales?

A. Yes, sir; we call all sales to furniture dealers wholesale sales.

Q. Whether there are one or more articles in the sale?

A. Yes, sir; the amount had nothing to do with it.

Q. Do you know what the ordinary rate of discount was on those sales?

A. In the city ten per cent., and five for cash.

Q. Do you know how those sales were made?

A. Generally by orders taken in the store from dealers.

Q. Do you know whether the goods were delivered to the dealers' warehouses, or whether they were delivered to his customer?

A. Both—sometimes delivered right to his customor, and sometimes delivered to their store.

Q. Do you know of any deduction of 10 and 20 per cent. for cash?

A. I do not.

Q. Were there any such deductions?

A. Not to my knowledge.

Cross-examined by Mr. MITCHELL:

Q. How do you account for the absence of those leaves?

A. Only on the general principle that the leaves are made of tissué paper, and that when wet they are easy to tear, and, except under careful handling, the corner of the brush would tear a leaf out in a minute, or the careless lifting of the paper, or the oil paper under the leaf when perfectly wet would tear it.

Q. You see the remnant of the leaf in each case, do you not?

A. Yes, sir.

Q. Showing that there was a leaf there that had been torn out?

A. Yes, sir.

219 Q. Have you no knowledge about it?

A. I have no knowledge of those two leaves.

Q. It is all speculation?

A. That is all.

Q. Are those the only two leaves which were referred to in the testimony in this case as having been torn out?

A. I believe so.

Q. Did you journalize entries from your order book into your journal direct?

A. From our sales book, but not from the order book.

Q. The tissue book which you have there is the sales book?

A. Yes, sir.

Q. Did you journalize everything from that book into your journal?

A. Yes, sir.

Q. What else did you carry into your journal?

A. The usual odd entries.

Q. What are they?

A. Merchandise credits, goods returned, and credits to balance account.

Q. What did you journalize them from?

A. Not journalized from any book; that was the original entry in those cases.

Q. The journal entry, then, is the first entry in those cases?

A. Yes, sir.

Q. All bills payable and bills receivable went directly into this journal?

A. Yes, sir.

Q. Did you not have a bill book?

A. The ordinary note book, giving a description of the notes.

Q. What record did you keep of bills payable?

A. The record in the ordinary blank note book.

Q. What record did you keep of your bills receivable?

A. The same book.

Q. Then you do have a regular bill book?

A. It is not called a bill book, hardly; it is what we call the note book. It contains merely a description of the notes given and received.

Q. Did you journalize from that book into the journal?

A. It can hardly be called journalizing; it is what we call the original entry of the transaction where notes are concerned.

Q. What I am after is not what you call it, but what you do.

A. That is what we do.

Q. Do you not enter it first in the note book, and then from that into the journal?

A. No, sir; we give no page in the other book at all. These entries do not show that it was transferred from any book.

Q. When a note transaction is had do you put it immediately in the journal or into the other book first?

A. We put it into the other book first?

Q. How often do you make up the journal?

A. We make up the journal of those things once a month.

Q. Where do you get the items at the end of the month?

A. From this note book; the journal does not show that it comes from the other book; there is no memorandum of pages.

Q. You say that all the sales which were made by these defendants were wholesale?

A. No, sir; I did not say so; I said that they were both wholesale and retail.

Q. The sales of this Everitt bed?

A. Yes, sir.

Q. Now, first, about the wholesale sales: What was the discount taken off?

A. The discount varied; in the city we gave 10 per cent. and 5 for cash.

Q. Making 15 where cash was paid?

A. No, sir; making 10 and 5.

Q. What other discount did you take off?

A. Then we had customers out of town to whom we gave a discount [of] 20 per cent. and 5 for cash, and we had others to whom we give one-third straight, net, and then one other to whom we gave forty per cent.

220 Q. What other one was that?

A. The Toby Furniture Company, of Chicago.

Q. A branch of this manufacturing company?

A. No, sir.

Q. Were not some of the same gentlemen interested in it?

A. No, sir.

Q. What was the reason of the discrimination in their favor?

A. I cannot give you the reasons; it was an arrangement between the Toby Manufacturing Company and the Hale & Kilburn Manufacturing Company.

Q. Did they keep a branch store for the Hale & Kilburn Manufacturing Company?

A. No, sir.

Q. Were they not advertised as such?

A. They may have been.

Q. By the Hale & Kilburn Manufacturing Company?

A. It may have been so.

Q. Then, if it was advertised as such the advertisements are untrue?

A. Well, it may have been a mistake. If they were advertised as branch stores it was untrue, simply because it was a mistake, and they should not have been advertised in that way.

Q. Are they not so advertised in this paper? (Trade Bureau, August 16th, 1879, page 16, shown witness.)

A. Yes, sir.

Q. To whom did you give thirty-three and a third per cent. off?

A. E. Edmundson & Son, of Pittsburg; the Boston branch store, managed by N. L. Stebbins, and the Baltimore branch store, managed by D. C. Burson.

Q. These are branch stores or special agencies of the Hale & Kilburn Manufacturing Company?

A. The last two are.

Q. Is the firm of E. Edmundson & Son special agents for the Hale & Kilburn Manufacturing Company?

A. They are special agents. I will change that word "special" to sole agents in Pittsburg.

Q. Under an agreement?

A. I believe they are.

Q. They would not give the agency to anybody else?

A. No, sir.

Q. To whom else was given 25 per cent. discount, or 20 per cent.?

A. To the out-of-town furniture trade.

Q. Was it given to all furniture dealers who lived outside of Philadelphia?

A. Yes, sir.

Q. Without exception?

A. Yes, sir; to anybody in the furniture trade.

Q. Did the Herendon Furniture Company of Cleveland, Ohio, get 20 per cent. off?

A. I cannot call to mind what their percentage was; we had not sold them but one lot until within a few days.

Q. Did Rammelsburg & Co., of Cincinnati, get 20 off?

A. They got more than that.

Q. Nothing else?

A. Not to my knowledge.

Q. Were your goods sold to Brooklyn at 10 off?
A. No, sir; 20 and 10.
Q. Making 30?
A. Making 20 and 10.
Q. How about Troy?
A. Troy, I think, was sold in the same way.
Q. Nothing less?
A. I do not say so; I do not call any instance to mind. I cannot keep all these accounts in my head.
Q. But as a general rule not less?
A. Not less than 20, except it may have been in the beginning of the trade, when I think the general discount was less than 20 per cent; I think it was 15. Our discounts have not always been 20 per cent.
Q. You have said in a former examination that there was no dispute between Mr. Everitt and the defendant except as
221 to the monthly accounts. Did you not write this letter? (Letter shown witness.)
A. Yes, sir.
Q. Refreshing your memory by it, I will ask you whether that letter convinces you that you were wrong in your former statements?
A. I will not change my previous answer until I see the preceding testimony. Everybody knows about this (referring to the letter); it was an open letter. I have not seen the testimony at all; and most of my testimony was taken long before anything occurred in regard to this (referring to the letter).

(Letter marked for identification by the master, "C. S. P., Ex. 10, 14, 79.")

Q. In whose handwriting is this letter? (Letter shown witness.)
A. I think it is John B. Kilburn's as near as I can tell.
Q. Who is he?
A. He is the assistant book-keeper of our firm.

(Letter marked for identification by the master, "C. S. P., Ex. 10, 14, '79.")

By Mr. OTTERSON:

Q. What do you know about this last paper produced.
A. Nothing, whatever.

HENRY S. HALE sworn and examined.

By Mr. OTTERSON:

Q. In what relation do you stand to this company?
A. I am the treasurer of the Hale & Kilburn Manufacturing Company.
Q. What do you know about this letter last produced, dated April 10, 1878? (Letter shown witness.)
A. This is a copy of a letter we received on that date from Colonel Mason, of Washington. The original of this letten was shown to Mr. Everitt on the very day it was received in our office. It was

then laid by, and that afternoon or the next day Mr. Everitt came in and wanted a copy of it. I told him I would look it up and have the copy made, which I did.

Q. And this is the copy?

A. Yes, sir; it is copied in the handwriting of John S. Kilburn, one of our book-keepers.

Q. And made for Mr. Everitt at his request?

A. Yes, sir.

Q. You have the original of that letter?

A. I think I have, unless it is here in this office.

Q. On what date was that letter received?

A. I should think it was received on the 11th, but I will not be positive.

Q. Was there any alteration of the date of it during any time?

A. No, sir.

Q. Mr. Everitt states in his testimony, "I read that letter, and at first glanced at it" This was on the 10th of April. "I saw that the date of it had been changed from the 5th to the 10th, and that is why I asked for the envelope." Is that true or is it not true? Had the date been changed from the 5th to the 10th?

A. It had never been changed in our office, and if it was changed before, it was changed before it was received by us.

Q. You have the original of that letter?

A. Yes, sir.

(Mr. MITCHELL to Mr. OTTERSON): I call for the production of the original letter with the envelope.

(Mr. OTTERSON to Mr. MITCHELL): The letter will be produced without a call.

By Mr. OTTERSON:

Q. Have you the envelope accompanying the letter?

A. No, sir.

Q. Do you know what has become of the envelope?

A. I do not. It was put into our waste basket, I suppose, where we put all our envelopes.

Q. Mr. Everitt says in his testimony that he read that let-
222 ter, and at the first glance at it he saw that it was dated on the 10th of April, and adds: "I saw that the date had been changed from the 5th to the 10th, and that is why I asked for the envelope. Mr. Harry Hale gave it to me, and I looked at the envelope, and I saw by the envelope that it had been received at the Philadelphia post office on the 6th, in the morning. I remarked to Mr. Hale that it was very strange that a letter should be dated in Washington on the 10th which was received on the morning of the 6th in Philadelphia. Is that true or false?

A. I remember no such conversation or incident.

Q. You say the date of this letter corresponds with the date of the original, which was never changed, and which was received in due course after that date?

A. Yes, sir; through the post office. It was received in our mail

on the very morning that it was shown to Mr. Everitt, and opened in the presence of Mr. C. Kilburn and my brother, J. Warren Hale.

Q. What are No. 16 beds?

A. They are a certain style of bed we make which does not contain the Everitt patent, nor any part of it.

Q. You make other bedsteads and other furniture besides folding bedsteads?

A. Yes, sir; great quantities of them.

Q. How long have your firm been in business in Philadelphia in that line?

A. We have been in business in Philadelphia about twelve years.

Q. Long before you knew Mr. Everitt, or knew anything about folding beds?

A. Yes, sir. We first commenced in the picture-frame business.

Q. Did you or did you not include No. 16 beds in your account with him?

A. We did, by mistake, include them in his account. I will not say that we ever included the 16 beds, but we have included Nos. 5, 11, and 18, which are on the same order; that is, outside of the patent.

Q. Mr. Everitt states that you charged him with twenty-six bed bottoms, $99 and some cents, I believe it was, and adds, "I never bought any bed bottoms off of them, nor their books will not show it; and since then I do not think I have been paid for any bed bottoms." What were those twenty-six bed bottoms?

A. They were spring beds that were used in this folding bed, upon which we paid him a royalty by mistake. That was in the early part of the business. It was the first twenty-six beds we sold with bed bottoms in; and one day there was a bedstead standing outside of our office with one of those bottoms in—the main office, in the front part of the store. Mr. Everitt came in, and I spoke to him, and said, "Mr. Everitt, why, we have been paying you royalty on those spring beds; that is not a part of the bed, and we cannot do that; we will have to charge them back to you;" and he smiled and said, "All right," or words to that effect; and so we charged them back to him, and they appeared in the account. We found them in the account.

Q. Was that with or without objection from him?

A. It was without the slightest objection from him.

Q. What were those spring beds or spring bottoms, as they are called? Were they peculiar to that bedstead, or were they such as could be used in any bedstead or without any bedstead?

A. They are spring bottoms, that can be used in any bed, whether it is a folding bed, an ordinary bedstead, or whether it is on the floor, and can be used with any bedstead.

Q. Was there anything peculiar about them?

A. Not the slightest. Of course, we fit them to the folding bed, but they can be used on any bed.

Q. They can be fitted to any bed?

A. Yes, sir. I can take a regular spring bottom, which we use now in the folding bed, and take it right out and lay it on the floor

and sleep on it; and I can put it into an ordinary bedstead, if the bedstead is of the right width to receive it.

223 Q. Were those bedsteads in use or otherwise before the folding bedstead was invented?

A. Those spring beds were, a long while ago; years and years before.

Q. Were they any part of the plaintiff's patent?

A. Not the slightest.

Q. Did you ever have any conversation with Mr. Everitt about this matter of the Stark patent, about which we have heard, or were you ever present when such a conversation was held?

A. I was present when considerable conversation was going on between me, Mr. Everitt, and Mr. Kilburn in regard to the Stark patent, and Mr. Kilburn tried his best to get Mr. Everitt to do something in relation to the Stark patent. He told Mr. Everitt that Mr. Stark agreed to take one thousand dollars for it, and asked him whether he would not buy it. Mr. Everitt replied that he knew all about it; it was good for nothing, and that he would have nothing to do with it.

Q. Did he say when he knew about it, or when he first knew about it?

A. He did not mention any time; he said he knew about it long ago, or something to that effect.

Q. Did he state when he knew about it with reference to your license?

A. No, sir.

Q. As to whether he had learned of it since the license to you?

A. He spoke of it as if he knew of it long ago and did not want to have anything to do with it. And furthermore he said that before he would sacrifice anything more on his patent, he would lose the whole of it first.

Q. Was there anything said about his being solicited to purchase it?

A. He was solicited to purchase it at one of those interviews.

Q. By whom?

A. By Kilburn.

Q. Had he been previously solicited to purchase it by any one outside of your firm before you were interested in it?

A. I could not state.

Q. In many of these accounts there are mattresses. Are they hair mattresses or are they spring mattresses?

A. They are hair mattresses, as a rule. We made very few husk and spring mattresses. These were at that time all hair mattresses of the best quality.

Q. They were not especially adapted to any particular form of bed, were they?

A. No, sir; they could be used on any bed. We simply put a button or a buckle on the side of the mattress to hold it in the folding bedstead; that was all the difference. We could take one of those mattresses right off and put it on any bed.

Q. What about the bedsteads with mirrors in them, and with golden ebony finish, etc.?

A. Those were extras to the bed that were put on afterwards.

Q. They were only an extra finish to the same form of bedstead?

A. Yes, sir; we added the mirrors to them; they were built without them.

Q. Do you know anything about Mr. Everitt being refused access to the books?

A. He never was to my knowledge; not for one day.

Q. Did you ever know of his examining the books?

A. I have seen him at the office a great many times, but really I could not say whether he examined them or not. I know he examined one of the books many times.

Q. That was the book containing his special account?

A. Yes, sir.

Q. He does not complain that that was withheld from him; I mean in regard to the other books?

A. I cannot say.

Q. Did you ever know of his presenting himself with an
224 accountant or counsel and asking to have the books examined?

A. I never did.

Q. He complains that statements were not furnished to him. Can you tell us about that?

A. There were some things said about statements along in the first part of the commencement of the manufacture of these bedsteads, and I told him that we were ready at any time to make our statements when he would tell us exactly how he wanted them made; and he said, "Never mind; wait until we get going awhile, and then I will let you know," or words to that effect; and then it was delayed awhile. He opened a store on Chestnut street for the special sale of these goods, and the store, from appearance, did not pay him; at any rate we had to pay his rent, and of course that was charged to him. That was another reason, I suppose, for the statements not being made out.

Q. Did that business ever change the balance so that it was against him?

A. Oh, yes, sir; it was against him for some time.

Q. How long?

A. I should think it was a year or more before it was settled up, but I really could not say positively how long; it was some time.

Q. Mr. Everitt produced a receipt for $162.50 from your firm, and he was asked how that money was paid by him. He said: "They kept it out of my royalties; I objected to it; they kept it in spite of me." Do you know what that $162.50 was?

A. I do; I recollect, I think, that it was for a lawyer's fee, and, according to the agreement, he was to pay half of the whole fee.

Q. What was the whole fee?

A. Twice $162.50.

Q. Then this $162.50 was the one-half of the counsel fee?

A. Yes, sir.

Q. To whom was it paid?

A. To Mr. Harding, patent attorney, and another attorney on Chestnut street somewhere; I do not know the name.

Q. You do not know what service they had been called upon to render in the matter?

A. They were called upon to make searches to ascertain whether the Everitt patent infringed the Maine patent or not.

Q. At whose instance was that inquiry made?

A. Jointly between the two—between Mr. Everitt and Mr. Kilburn.

Q. And this sum $162.50 was the half of the lawyer's fee?

A. Yes, sir.

Q. State whether there was any objection made to its being deducted?

A. I never heard any objection.

Q. You say that the 10, the 11, the 16, the 17, and the 18 beds were all manufactured by your firm?

A. Outside of the Everitt patent.

Q. But that in the early part of your business some of the 16's, the 10's, the 11's, and 18's had got into his account?

A. Yes, sir.

A. And that, you say, was a mistake?

A. Yes, sir.

Q. Was it afterwards corrected?

A. No, sir; we paid it and let it alone.

Q. You say it was a mistake?

A. Yes, sir; positively so. We allowed, I believe, at that time for the simple sake of saving trouble.

Q. Was that mistake discovered before this litigation commenced?

A. Yes, sir.

Q. And did you stop accounting for those bedsteads before this litigation commenced?

A. We stopped a little while, and then afterwards agreed to pay him to save trouble, as I said before.

Q. That was long before the litigation?

A. Yes, sir; that was before we knew of this Stark patent.

225 Q. When did you first know of the Stark patent; how long was it before that letter of April 10th, 1878?

A. I think it was the first part of February that we first knew of that patent.

Q. Do you know how you got the information of it?

A. The first information I got of it was from my brother.

Q. Did you ever see Mr. Stark?

A. Yes, sir.

Q. Where?

A. In our office.

Q. Was that before or after the 10th of April, 1878?

A. It was before; it was the first part of February.

Q. And you saw Mr. Stark?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Very little; Mr. Kilburn had most of the conversation.

Q. Was it in your presence?

A. Yes, sir; a great deal of it was.

Q. Did you have any conversation with Mr. Everitt about Mr. Stark's visit, and the object of his visit?

A. I do not know as there was any more than what I have stated.

Q. Did you report to Mr. Everitt the fact that Mr. Stark had been in there?

A. No, sir; I do not think I did.

Q. Were you present when anyone else did?

A. Mr. Kilburn informed him that Mr. Stark had been there.

Q. In your presence?

A. Yes, sir.

Q. Did you ever see Mr. Stark and Mr. Everitt together?

A. No, sir.

Q. You saw Mr. Everitt and Mr. Kilburn together when this Stark patent was the subject of conversation?

A. Yes, sir.

Q. What passed between them?

A. Mr. Kilburn told Mr. Everitt that Stark was there, or had been there, and asked one thousand dollars for his patent. He asked Mr. Everitt whether he would purchase it, and Mr. Everitt said no, that he would not have anything to do with it, that he knew all about it. That is the sum and substance of it.

Q. Did he then say when he first knew about it?

A. Yes, sir; that he knew about it long ago—that he knew all about it, and that he would not have anything to do with it.

Q. What is the peculiarity of the Everitt patent in actual operation?

A. It is a folding bed that folds up in the form of a wardrobe, and the only difference between that and Mr. Stark's patent is that the side pieces on the foot board extend above the side rail or box when it is up, forming a place to hold pillows and bed clothing. There is another claim in his patent which we never have used.

Q. I want to know what appears in the article in use different from other bedsteads?

A. The general appearance of the Everitt bed is the same as other wardrobe beds, and the only distinct difference in the patents is the extending above the side rail.

Q. In that it differs both from the Stark and Maine patents?

A. Yes, sir.

Q. And in other respects are they alike?

A. In other respects they both have a head board and they both have a body.

Q. Are they in all respects alike?

A. Yes, sir; they are very similar.

Q. What about this matter of discount; were your sales in the city of Philadelphia wholesale or retail sales?

A. They ought to be called retail sales, because they were sold one article at a time, and to the furniture men or trade who had,
226 perhaps, already secured a customer, and they would come

to our place and have the order filled or executed; and a great many times we would deliver the article direct to the private party and set the bed up in the house.

Q. Had you a uniform rate of discount for those customers?

A. We allowed them 10 and 5. At one time we allowed them more.

Q. When you say 10 and 5, do you mean 10 off first, and 5 off the balance for cash?

A. Yes, sir.

Q. You sold yourself largely to individual customers in the city?

A. Yes, sir; the largest bulk of our sales were to private parties in the city—and great deal the largest; and the reason that a greater discount was not given to the city trade was just for our own self-protection in retailing goods. If we had given them a greater discount they would have been sure to have cut the prices or discount.

Q. Have your rates of discount been the same in the trade from the beginning down to this time?

A. They have changed a great many times.

Q. State how they varied as to the classes of customers and how they have varied as to time in different times.

A. First we gave off 10 and 5; then 20; then 20 and 10; then 20, 10 and 5; then 10, 10 and 10; one-third; 40 per cent. 43 per cent. is the highest I know of, and, in other cases, we have made special sales where it would figure considerably over 43.

Q. Did Mr. Everitt ever make any remark upon the subject of your discounts, as to their being too low or the price of the bedstead being too high?

A. He thought, along toward the first, that the price of the bedstead was too high, and he thought it best for them to be lowered, and that we would sell more of them.

Q. How did your rates of discount vary in regard to the different class of customers in different localities?

A. To our special agents, or those that made a business of buying the beds wholesale and keeping a stock of them and advertising them, we gave a uniform discount—the same discount that we have taken off and used as a basis for figuring Mr. Everitt's royalty, which was agreed upon between Mr. Everitt and ourselves. It was agreed from the very start that we were to use as a basis the lowest wholesale price. We had so many different discounts that it was thought best by both parties to take off a uniform discount, the same as that taken off to our special agents and stores and those who made a business of wholesaling the goods.

(Objected to by Mr. Mitchell because the agreement as to the rate of discount between the defendants and Mr. Everitt is in writing.)

Q. When was this agreement of which you have spoken?

A. It was along in the early part of the commencement.

Q. I mean as to the uniform rates of discount?

A. Yes, sir; the same as is taken to these special agents and our own stores.

Q. By special agents do you mean parties exclusively engaged in selling these goods, or do you mean those who had exclusive rights in particular localities to sell them?

A. They were usually furniture dealers who would buy a number of beds and agree to advertise them and push them; and we agreed verbally with the most of them to give them the sole sale or agency of those beds in that city, town, or locality.

Q. Is it in that sense, or in what sense, that Messrs. Edmundson & Son, in Pittsburg, are the agents of your house and the Toby Furniture Company of Chicago?

A. Yes, sir.

Q. Prior to the time when you first say there was a uniform rate of discount agreed upon as the basis of your settlement with Mr. Everitt, were any inquiries ever made about your rates by him?

A. Frequently. Mr. Everitt would frequently say, "Well, Harry, what are you giving off now." I would tell him whatever the discount was at that time to these special agencies or dealers, and he would say, "All right;" and he never made the slightest objec-
227 tion in any way, shape, or form to that discount. I would like to have that distinctly understood, because I know what I am saying.

Q. Do you know what the rate of discount was which was allowed to Mr. Everitt himself when he was busy selling the goods?

A. From memory it is 20, or 20 and 5; but whatever the discount was it was the same that we gave to our own stores and the other agencies at that time.

Q. State what that discount was?

A. To Joshua Jones & Son, of Cincinnati, we sold quite a number of beds, 6 or 10, and gave them 10, 10 and 10 off; that was August 10th, 1875. We took the same discount off in figuring Mr. Everitt's royalty.

To. Mr. N. L. Stebbins, Chicago, we sold at same rate, 10, 10 and 10 off, November 27th, 1875, and allowed Mr. Everitt the same.

We sold a bed to Kilburn & Gates, of Burlington, Vermont, November, 1875, for which we allowed 10, 10 and 10 off, and the same to Mr. Everitt.

We sold July 11th, 1876, 3 beds to Francis and Jane Smith, of Glasgow, Scotland, for which we allowed 20 per cent. off, and we allowed the same to Mr. Everitt, which was the discount we were taking off at that time to all the agencies.

We sold to Bancroft & Boyden, of Boston, a number of beds at 20 per cent. off, September 6th, 1876, and allowed the same to Mr. Everitt.

We sold to the Oshaw Cabinet Company, of Toronto, on October 28th, 1876, and allowed 20 per cent., and allowed same to Mr. Everitt.

We sold to Marcus Stephen & Co., of Detroit, Michigan, at 20, 10 and 5 off—five was the cash discount—and allowed the same to Mr. Everitt.

We sold to Burrill, Comstock & Co., of St. Louis, a number of beds, at 20, 10 and 5 off, and allowed the same to Mr. Everitt.

These houses bought the beds and agreed to advertise them and

push them, and do all they could to sell them, in consideration of our allowing them that discount and of their having the exclusive right to sell them.

Q. I think you had cases where you allowed a greater discount to Mr. Everitt or where you settled with him at a less discount?

A. From May to October, 1877, we took off to the New York store 33⅓ per cent. discount, and to Mr. Everitt we allowed 20, 10, and 5; that is 31 per cent. and a fraction. The reason that that discount was given to the New York store and was not taken off of Mr. Everitt was because the other agencies and such parties as I have mentioned were not getting that same discount. When we allowed one-third to others then we allowed it to Mr. Everitt.

We sold April 18, 1876, to G. G. Braman, of this city, one No. 1 veneered bed, with the best mattress and spring, for $125. We were charging at that time $35 for the mattress and $10 for the spring. We deducted that, and it makes the bed $75, netting us $75. The list price of that bed is $125. We paid Mr. Everitt a royalty on $96, which is nearly 40 per cent. off of the bed. We were allowing Everitt at that time 20 per cent., the same as the agents.

We sold to Isaac Keith, of Troy, one No. 10 three-quarters and one No. 3 three-quarters for $95, boxed and delivered. It leaves a net to us of $79. We paid a royalty to Mr. Everitt on $85.50, which is over 35 per cent. off.

We sold to H. Leech, of Troy, one No. 1 three-quarters veneered, mattress, springs, for $125, boxed and delivered, which netted us, less the spring and mattress, just $77. The list price is $130. We paid a royalty to Mr. Everitt on $88.92, which is over 40 per cent. off.

We sold to Christian Wise, of Utica, N. Y., one bed and spring, three-quarters, No. 10, April 17, 1877, boxed and delivered, for $40. It netted us $26, less the freight. We paid a royalty to Mr. Everitt on $38.37.

We sold to C. Hayden, April 23, 1877, one No. 5 and one No. 10 for $110, and boxed, netting us $100 for the beds, less the box. We paid Mr. Everitt a royalty on $106.02.

228 We sold Vincent Storm & Co., of Cleveland, a number of beds at 30 per cent. off, a bed bill, which means subject to 5 for cash. They netted us about 30 and 10 off, and we figured them to Mr. Everitt at 20, 10, and 5 off.

These are a few of the instances and amounts; most of them I sold myself, wherein the discount allowed to the customer was greater than the basis upon which I settled with Mr. Everitt.

Adjourned until Thursday, October 16, 1879, at 3 p. m.

PHILADELPHIA, THURSDAY, *October* 16, 1879.

Present: The master, Mr. Otterson, Mr. S. Hale, Mr. Mitchell, and Mr. Everitt.

Examination of HENRY S. HALE resumed by Mr. OTTERSON:

Q. Did you give a reason, or any reasons, why a larger discount was allowed to the Toby Manufacturing Company than to other dealers? If you did not, just state so, or, if you had a reason, give it.

A. I did not; the reason was because of the great expense in getting them to Chicago; they insisted on getting a larger discount, or they would give up the sale of the bed and take hold of some other bed; it was the best we could do with them; they wanted, and hung on very hard for, forty-five per cent., and we closed it at that time at 43; we are now selling them at 40 off.

Q. In sales book S, page 191, February 13, 1875, is an entry referred to by Mr. Everitt in his direct examination —"Pennsylvania railroad, one set of castings and springs for patent folding bedstead, including royalty to use the same in car No. 50, $50;" I want to know what royalty there was in that transaction, or if there was any license to the railroad company to use the articles referred to derived in any way except from the fact of their having purchased them?

A. They purchased the iron-work for those bedsteads, and we charged them that amount, whatever the amount of the bill was, and it was a mistake; that is, the royalty should go with the article the same as we sell our regular folding bedsteads.

Q. To them the same as anybody else?

A. Yes, sir.

Q. You say there was no license or authority aside from this simple transaction of the purchase and sale?

A. No, sir.

Q. What do mean by that?

A. I mean the right to use that bedstead or the articles sent with the purchase.

Q. On sales book B, page 224, October 14th, 1875, "Springs and fittings for one champion folding bedstead, including royalty, car No. 50, $30;" what do you mean to say to that?

A. I make the same reply; the words "including royalty," which were put on the bill, should not have been there, as the right to use the bed went with the article.

Q. Sales book C, page 613, August 3, 1876, says: "One set patent folding side rails, to order, 6 by 3 long, ash, crib style, including royalty, $15;" what as to that?

A. I make the same answer to that, with the explanation that they were made for an ordinary crib, and not a folding crib.

Q. Do you know when the first bedstead of this pattern was sold after this contract was made with Mr. Everitt?

A. In October, 1874, there was one bedstead sent on sale, or in the last of September, to Freeman & Co., on Second street; that was returned by them a little while after unsold.

Q. Was that the one that was sold in October?

A. No, sir; it was not sold to them; it was sent on sale.

Q. Was that the one which was sold in October?

A. No, sir; it was not.

Q. The first one that was sold was sold in October.

A. Yes, sir; to Mr. Lippincott.

Q. When did Mr. Everitt take the store in Chestnut street?

A. It was the following June, 1875; the lease may have been made a short time before that.

229 Q. About how long did he continue to run the Chestnut street store?

A. One year.

Q. That carried it down to June or July, 1876?

A. Yes, sir.

Q. Were the sales of this bedstead many or few from October, 1874, on?

A. They were comparatively few for that fall, and I make the same remark for the following spring.

Q. Did your firm furnish money to Mr. Everitt during that time, or any portion of it, that was not due him; did you advance money to him—loan money to him?

A. In June we loaned him $200 and took his note for it; that was to help him start the store, and we also paid his rent every month from that time until the close.

Q. You furnished him money to pay his rent?

A. Yes, sir; from that time till the close of the store.

Q. When was that?

A. That was the following June; he kept the store for one year.

Q. Can you state how much was advanced to him in that time?

A. We advanced him 2,170 odd dollars; we had notes to that amount standing against him on the 1st of January, 1877.

Q. Was that over and above deductions made for royalties which had been earned by him, or were the royalties to be deducted from that sum?

A. The royalties were to be deducted from that sum, but there was no time but what the balance was in our favor.

Q. No time up to that time?

A. No time up to that time; yes, sir.

Q. Will you state, if you please, whether that was an occasion of indifference on the part of Mr. Everitt about the statements which he complains he did not get because of the fact that the balance was against him and he knew it?

A. It was.

Q. When was that balance finally wiped out by the accruing of royalties or otherwise?

A. Just about that time—January 1st, 1877.

Q. I understand you to say that at that time you had his notes to the amount of $2,170?

A. We did hold his notes at that time and we settled up to that time and gave his notes to him.

Q. Then you gave the notes to him at that time in payment of royalties, as it were, instead of cash, which you had given him before?

A. Yes, sir; we had given him some cash as he went along.

Q. Besides paying his rent?

A. Yes, sir; we paid him some cash on account of his royalty.

Q. But the balance was against him?

A. Yes, sir; down to that time.

Q. Mr. Everitt says, on page 73 of the testimony, that he was not paid in full at the outset—the first four months—and that you did

not settle in full up to January, 1877; during the first four months of the contract was there anything doing?

A. No, sir.

Q. Was there a dime doing?

A. No, sir; no bed sold until October, 1874.

Q. And the contract was from April 16th?

A. April 16th was the date of the contract.

Q. Then it was over six months after the contract was signed before a single bedstead was sold?

A. Yes, sir.

Q. Then during the first four months that he speaks of there was nothing to account for whatever?

A. No, sir.

(Mr. Mitchell objects to Mr. Otterson leading the witness.)

Q. On page 73 of the testimony Mr. Everitt says: "I think, for the first four months, or nearly so, they paid me all. I think so; I do not know for certain."

A. We did not owe him anything to pay him.

Q. Mr. Everitt says that there were no accounts given to him of bedsteads with looking-glass fronts, extra finish, ebony and
230 gold, and says that no such bedstead appeared in his accounts. Will you tell me whether bedsteads with such finishes were accounted for, and how?

A. Every one of those bedsteads was accounted for, but not the extra finish or looking-glass fronts.

Q. How do you mean?

A. They were accounted for as bedsteads.

Q. How were they separated?

A. The price of the looking-glass, for instance, was taken off of the bedstead, and the price of the bedstead carried out, according to our list. They were complete without the looking-glass or extra finish.

Q. How about the ebony or gold finish?

A. The same with that.

Q. You do not mean to say that the ebony and gold were taken off?

A. The price of the extra finish was taken off.

Q. Do you know whether Mr. Everitt was consulted about the purchase of patent rights that were subsequently purchased by your firm—the Maine and Stark patents—and invited to participate in their purchase?

A. I know that he was.

Q. By whom was he solicited?

A. By Mr. C. Kilburn and also myself.

Q. You mean these Maine and Stark patents?

A. Yes, sir.

Q. And that, before you had any interest in them?

A. Yes, sir. The very day that we received notice from the Maine patents, in person, was through Mr. Townsend, the president of the company, who owned the Maine patent at that time, and Mr. Everitt saw Mr. Townsend in our office the very day he arrived there, and was consulted about the Maine patent. Mr. Townsend returned to

Boston, and in a day or two after we received a letter from him. That letter was shown to Mr. Everitt immediately on its receipt.

Q. Have you that letter?

A. I have.

Q. Where is it?

A. Here. (Letter produced by the witness and offered in evidence by Mr. Otterson, marked "No. —, October 16th, 1879, R. A. W.," being letter of H. E. Townsend, dated June 9th, 1878, to the Hale & Kilburn Manufacturing Company. Mr. Mitchell objects to the offer in evidence.)

Q. Is this the letter you refer to?

A. It is.

Q. Is that the only letter you received from that quarter before acting in this purchase?

(Mr. Mitchell objects, as there is nothing in this case in controversy concerning the Maine patent.)

A. No.

Q. Is that one of them?

A. There is another.

Q. Is this it? (Letter shown witness.)

A. Yes, sir.

Q. Was this shown to Mr. Everitt?

A. Yes, sir.

(Letter dated August 3d, 1878, from Henry E. Townsend to the Hale & Kilburn Manufacturing Company, offered in evidence and marked "No. —, October 16th, 1879, R. A. W." Offer objected to by Mr. Mitchell.)

Q. What was Mr. Everitt's reply when he was asked with reference to these letters, or consulted in reference to the Maine patents?

A. He refused to have anything to do about it, and also stated, or says: "I have known about that long ago; long before you purchased my patent."

Q. Are you talking about the Maine patent?

A. The Maine and Stark patents.

Q. I am talking about the Maine patent—he refused to have any thing to do with it?

A. Yes, sir; he refused to have anything to do with it.

Q. What else did he say?

A. Oh! he laughed, and said: "Let them fire away," or some words to that effect.

231 Q. What did he say about the patent itself, if he said anything?

A. He said he knew all about it; that it was not good for anything, and that he would not have anything to do with it.

Q. Well, you afterwards purchased it?

A. Yes, sir; at quite an expense.

Q. Did he participate in that purchase?

A. He did not.

Q. Who proposed the sale of the Stark patent to your firm, and when was that proposed?

A. Mr. Stark himself. That was in the early part of February, 1878.

Q. How soon after that was that reported to Mr. Everitt, if at all?

A. Immediately.

Q What investigation was made as to the validity or novelty of the Stark patent?

A. An investigation by ourselves, do you mean?

Q. By yourselves, or others for you?

A. We were fully convinced.

Q. What investigation was made either by yourselves or procurement to test the validity or usefulness of the Stark patent?

(Objected to by Mr. Mitchell unless it is proposed to connect Mr. Everitt with the investigation.)

A. Well, we decided that the Stark patent was not really of itself available—that is, it could not be made a saleable article as it stood, as there *was* no weights in his patent, and the bedstead had to be lifted by main strength. Nevertheless, it was a clear point in our minds that the Everitt patent infringed the Stark patent.

Q. Was this reported to Mr. Everitt or not?

A. It was.

Q. Do you know whether or not he was requested to participate in the purchase of the Stark patent?

A. I know he was, by Mr. Kilburn and myself, quite a number of times, but he would always remark that he knew all about the Stark patent long before we purchased his patent, and would have nothing to do with it; that it was good for nothing.

Cross-examined by Mr. MITCHELL:

Q. When did you first hear of Stark's patent?

A. In the early part of February, 1878.

Q. Who told you about it?

A. I heard it first through my brother, J. Warren Hale.

Q. What did he tell you?

A. He told me that Stark had been in there and informed us of the infringement on his patent.

Q. What is your brother's business?

A. He is secretary of our firm or company. He said he also told Mr. Everitt that Stark had been there and that he claimed we infringed on him.

Q. Did he tell you he had seen Stark?

A. He did.

Q. Did he tell you he had sent for Stark to come there?

A. He did not, because he did not send for him.

Q. How do you know he did not?

A. I know it as much as I know anything, that he did not.

Q. How do you know?

A. Because I take his word, as a brother, that he never did.

Q. Did you ask him if he sent for Stark?

A. No, sir; because I know he never did, or no one else about our concern.

Q. Did he ever tell you he had not sent for Stark?

A. He never said anything about it.

Q. Then how do you know he did not, because you would take his word for it, and yet he never gave you any word about it.

A. It is ridiculous to think of such a thing. If he had done such a thing I would have known it.

Q. But you said a moment ago that you knew it because
232 you took his word for it, and yet you say he never told you anything about it. How do you account for that?

A. I say he never did, to the best of my knowledge and belief.

Q. That is better. Did he tell you how he first came to hear of Stark?

A. He said that Stark had just came in that day.

Q. Did he tell you how he first came to hear of Stark?

A. No; he did not.

Q. Did anybody ever tell you; did anybody in your firm ever tell you how he first heard of Stark?

A. We all heard of it from the same source at the same time.

Q. You could not have done so?

A. Well, except my brother; Mr. Kilburn and myself, he informed both of us at the time that Mr. Stark had been there that day.

Q. Are those all of the company that there are—yourself, Mr. Kilburn, and your brother?

A. No, sir; my father.

Q. Then, exactly what did you mean when you said that all heard of it at the same time?

A. Well, I meant Mr. Kilburn and myself.

Q. You did not mean, when you said "we all," to include all the members of the company?

A. No, not all of them.

Q. Is it within your knowledge, or have you heard any of them say, that any one of them sent for Stark?

A. I never did.

Q. Have you no knowledge that your firm, or somebody representing you on your behalf, sent to Kansas to bring Stark on East?

A. I have no knowledge whatever of any such transaction or any one, either connected with our firm or outside, ever sending for Mr. Stark.

Q. Where did Mr. Stark live when he was at home?

A. Topeka, Kansas, is his address. I do not know whether he lives there now or not.

Q. Give the names of the various officers of your concern who have authority in its management?

A. Mr. C. Kilburn, who is our president; Warren Hale, my father, is vice-president; my brother, J. Warren Hale, is secretary; Mr. Artemus Kilburn has an interest. He works in the factory and superintends it.

Q. Is there another superintendent?

A. Yes, sir.

Q. What is his name?
A. His name is Samuel M. Newcomb.
Q. Where is he occupied?
A. In the factory.
Q. How?
A. As general superintendent.
Q. Where is the factory?
A. The factory is in the rear of our store, 48 and 50 North Sixth street.
Q. Where is Artemus Kilburn occupied?
A. He is occupied in the lumber department of our factory; the lower part of it. We have also an assistant superintendent.
Q. What is his name?
A. I have forgotten his first name; his name is Mr. Folger.
Q. Who made a bargain with Stark for the purpose of purchasing his patent?
A. Mr. Kilburn and myself.
Q. Did you take any part in the negotiation, or did Mr. Kilburn make the bargain?
A. Mr. Kilburn did the most of the talking.
Q. Were you present during the whole time to hear all that was said?
A. I was present during most of the time; I did not hear all that was said.
Q. When was the bargain made—I mean when you first made the bargain with him?
A. I think it was the latter part of February, 1878.
233 Q. Where was that?
A. In our office.
Q. In Philadelphia?
A. Yes, sir.
Q. Who was present at that bargain?
A. Mr. Kilburn and myself, and my brother might have been; I could not say positively.
Q. Do you mean your brother J. Warren Hale?
A. Yes, sir; I have but one brother.
Q. What was the bargain?
A. Mr. Stark agreed to sell us his patent for $1,000.
Q. Were any writings made?
A. Not then.
Q. Were there writings subsequently made?
A. Yes, sir; there was an assignment subsequently made.
Q. Where was that writing made?
A. I think that was made in Washington.
Q. By whom was it drawn?
A. By Colonel R. Mason, of that place, a patent attorney of Washington.
Q. Who employed him to draw that assignment?
A. I could not say whether it was Mr. Kilburn or Mr. Stark.
Q. Did Colonel R. Mason do that as the attorney for your manufacturing company?

A. He had done prior business for us in regard to other patents.

Q. And subsequent business, too?

A. I think so.

Q. Did he examine Stark's patent and give you an opinion upon it before you bought it?

A. I think he did.

Q. He was employed by your company to do so, was he not?

A. Certainly.

Q. When Stark made the bargain you say no writings were made. What agreement was made between Stark and Kilburn at the time as to the time of making the writing?

A. I could not say as to that. Mr. Kilburn and Mr. Stark had that in charge.

Q. You said that you heard most of what was said; did you hear nothing about it?

A. I did not hear all.

Q. Did you hear nothing about that?

A. No, sir.

Q. What agreement was made between Mr. Kilburn and Mr. Stark at the time in regard to the payment of the $1,000? Did you hear that?

A. Yes, sir; we paid him on account.

Q. But what agreement was made in regard to the payment of the balance?

A. We were to pay him as he required it; as he wanted it.

Q. Were you to pay him without any assignment from him?

A. No; we only paid him a portion first.

Q. How much did you pay him?

A. I think it was a hundred or two dollars.

Q. Did you take a receipt?

A. We did.

Q. Have you that receipt?

A. It is among our receipts, and that receipt has been produced; we gave him our due bill.

Q. I am not speaking of the due bill; you did not give him a due bill for the money you gave him at the time, did you?

A. No; for the balance.

Q. I am speaking of the receipt for the money you paid him at the time; where is it?

A. I presume it is in our receipt book.

Mr. MITCHELL. I call upon Mr. Otterson for the production of that receipt.

Mr. OTTERSON. That receipt has been produced upon call by Mr. Otterson, and offered in evidence long ago.

234 Mr. MITCHELL: That may be so, but this investigation has been going on for a long time, and I have not been present at all the meetings. I think I may ask indulgence if I forget what has been offered in evidence.

(To the witness:) What was it that Mr. Kilburn told Mr. Stark

to do at that time with regard to making an assignment of that patent?

A. I really could not answer that question.

Q. Did your firm know of Stark's patent before you saw him, or before your brother told you that he had seen him?

A. Never.

Q. And you never heard of it?

A. Never heard of it, or had the slightest idea of its existence.

Q. Did you or Mr. Kilburn buy the patent from Mr. Stark, the first time you saw him?

A. I think not. I think we had several interviews.

Q. Did you have this opinion from Colonel Mason, of Washington, before you closed the bargain with Stark?

A. Just at the last moment I think it came.

Q. Was it in writing?

A. No, sir; I think it was a telegraph dispatch.

Q. Have you that dispatch?

A. I have not.

Q. Where is it?

A. I could not tell you.

Q. Do not you keep your telegraph dispatches?

A. It may be filed away in our letters; I will not say positively.

Q. Is it not the habit of your firm to keep letters and telegraph dispatches on business?

A. I do not know about their filing away telegraph dispatches, but I will not say that they do not.

Mr. MITCHELL: I call upon Mr. Otterson to produce that telegraphic dispatch.

(To the witness:) Was the due bill drawn up and signed at the same time that you paid Mr. Stark one hundred dollars or two on account?

A. I cannot say as to that.

Q. Did you give Mr. Stark a due bill before you got an assignment of the patent?

A. We did, I think.

Q. When did Mr. Stark go to Washington; how long after the interview with you and Mr. Kilburn?

A. What interview do you mean?

Q. I mean the interview when you bought the patent, and gave him one hundred dollars or two on account?

A. It was a number of days after; I cannot exactly remember the time.

Q. Did he go to Washington by your direction, or the direction of your firm or company?

A. I think he went down there with Mr. Kilburn.

Q. Mr. Kilburn went with him?

A. I think so.

Q. Did you ever see the assignment that was drawn at that time?

A. Yes, sir; I saw it. I can tell you at about what date.

Q. I would rather you would not refresh your memory unless by a memorandum made at the time, when it would be proper to do so.

A. I have here the assignment itself.

Q. Refer to it, please.

A. It was about the 1st of January, 1879, that I first saw that assignment.

Q. Do you know whether it is the only paper that Mr. Stark ever signed assigning this patent to your company?

A. It is.

Q. Do you say so positively?

A. I do. To the best of my knowledge and belief, it is the only paper.

Q. You mean to say, then, that it is the only paper you ever heard of?

A. I mean to say it is the only paper—the only assignment—we ever had from him; we never had but this one.

235 By Mr. OTTERSON:

Q. That you know of?

A. Yes, sir; I know nothing of any other one.

By Mr. MITCHELL:

Q. You say the first you ever saw of this paper was about the 1st of January of this year?

A. Yes, sir; about.

Q. Where was it when you first saw it?

A. It was received in the mail; through the mail.

Q. From whom?

A. From Colonel R. Mason; it was left in his charge; in trust, as I understand it.

Q. What was said between Mr. Stark and Mr. Kilburn, in your presence, as to the reissue of this patent?

A. All that I know about that is that it was to be reissued.

Q. You mean that it was so agreed between Mr. Stark and Mr. Kilburn?

A. Yes, sir; we bought it with that understanding, that Stark was to have it reissued, which was done.

Q. Where is your brother?

A. He is at the office.

Q. When did you next hear anything about Stark and the assignment of his patent, after Mr. Stark and Mr. Kilburn had the conversation that you speak of?

A. Let me understand that, please.

Q. You say that you were present at a conversation between Mr. Kilburn and Mr. Stark, at which Stark made a bargain for the sale of the patent for one thousand dollars, and something was paid to Stark on account and a due bill was given to him for the balance; when did you next hear of Mr. Stark and his patent after that?

A. I saw Mr. Stark frequently.

Q. When next; when did you see him next after that?

A. It might have been a few days; it might have been longer or shorter; he was in quite frequently.

Q. Had he been to Washington in the meantime?

A. I do not know whether he had been to Washington in the meantime or not.

Q. Did you ever hear anything about it; about what he did when he went to Washington? Did any of the defendants ever tell you anything that took place when Stark went to Washington?

A. Nothing, except that he made an assignment.

Q. And you say that this paper, which is dated the 7th of March, 1878, is the only paper resembling an assignment that Mr. Stark ever gave to your company, of which you have any knowledge?

A. Yes, sir.

Q. Let me look at the reissue of the Stark patent?

A. This (patent produced) is the Stark patent; it is not in evidence, but a certified copy of it is.

Q. (Referring to the potent). Who is J. B. Kilburn?

A. He is one of our book-keepers.

Q. Were you present when this specification for the reissuing for this patent was written?

A. I was not.

Q. Now were you present when it was signed by Mr. Stark?

A. I was not.

Q. Where was it signed?

A. I think it was signed in our office, where the names John B. Kilburn and Owen D. Roberts appear.

Q. Do you know who prepared it?

A. Col. R. Mason.

Q. Who paid Mr. Mason for this service?

A. Mr. Stark.

Q. Are you sure of that?

A. I am.

Q. How do you know he did?

A. Well, I know, for one reason, that I found no record of it on our books, and Mr. Kilburn told me that he (Stark) was to pay for it.

Q. Which Mr. Kilburn?

A. Mr. C. Kilburn.

Q. Had you bought the patent at the time this specification for a reissue was signed in your office?

A. We had made that agreement.

236 Q. And paid something on account?

A. Yes, sir.

A. And given Stark a due bill?

A. Yes, sir; I think we had.

Q. Had you anything from Stark to show that he had sold you his right at the time—any paper?

A. No, sir; not that I know of.

Q. Do you know what Mr. Stark signed?

A. That is the only assignment I ever saw.

Q. Do you know what Stark wrote and signed in Washington under the advice of Mr. Mason?

A. I do not.

Q. Did Mr. Cheney Kilburn never tell you that there was another agreement prior to this?

A. He never did.

Q. Why did you conceal from Mr. Everitt the fact that you had purchased this patent from Stark?

A. At that time?

Q. At any time?

A. I do not know as we had any particular reason.

Q. You did conceal it from him, did you not?

A. After we purchased it I won't say that we did or did not.

Q. Do you not know that you did?

A. I did not tell him. I did not inform Mr. Everitt. Whether anybody else did I am not able to say.

Q. Were you present at any interview between Mr. Everitt and Mr. Cheney Kilburn in which the question was asked, and it was denied, that your firm had bought it?

A. No, sir; I was not. I never heard any such denial.

Q. Do you not remember, in my office, when Mr. Mason was there, and Mr. Connelly was there, and Mr. Cheney Kilburn was there, and you were there, and I was there?

A. I heard Col. R. Mason say that there was no record of it at the Patent Office in our name.

Q. Is that all you that you heard said—did you not hear it denied?

A. I did not hear a positive denial.

Q. Why did you have this suit commenced by Stark against yourselves after you had bought his right and held a full assigning of his patent?

A. One reason was that it was to test the patent.

Q. Did you not know that efforts were being made on your behalf during the whole time it was going on to induce Mr. Everitt to reduce his royalty?

A. We were always in hopes——

Q. Please answer the question. Did you not know that efforts were being made on your behalf during the whole time it was going on to induce Mr. Everitt to reduce his royalty?

A. I think something was said about it.

Q. Who instructed Col. Mason to file that bill in the name of Stark in the circuit court of the United States against you?

A. I think it was Mr. Kilburn.

Q. What was the purpose of the interview I have already spoken of where the gentlemen I have named were present, together with yourself?

A. To see if we could not make some arrangement with Mr. Everitt.

Q. What arrangement did you offer to make with him, or what was offered on your behalf?

A. I do not know of any offer.

Q. Do you not remember that it was offered to divide the royalty evenly between Mr. Stark and Mr. Everitt, the royalty which Mr. Everitt was entitled to under the agreement?

A. That may have been.

Q. What did Col. Mason say at that meeting with regard to his position; did not he say he represented Mr. Stark?

A. He did.

Q. Did not he speak of that as a proposal that Mr. Stark might probably be willing to accept?

A. I think he did.

237 Q. Did he, in fact, represent Mr. Stark at that time with regard to that proposal?

A. Well, he did not.

Q. Do you remember what was the average amount of Mr. Everitt's yearly royalty from your company, or what was his monthly average—about? I do not care to be very particular.

A. I will have to guess at it.

Q. As nearly as you can. It would be a guess from a person who must have knowledge. Are you not the treasurer of your company?

A. As near as I can guess, it was about two thousand dollars a year for the last two or three years.

Q. That was the amount that you actually paid him or credited him with?

A. Yes, sir; it was about that. It might have been more and might have been less.

Q. Have you the opinion for which the sum of $162.50 spoken of in your testimony-in-chief was Mr. Everitt's half?

A. I have it with me.

Q. Produce it, please?

A. (Producing two opinions.) There are two of them.

(The two opinions offered in evidence by Mr. Mitchell. The opinion in Maine *vs.* Everitt, by George Harding, being marked "No. —, Oct. 16th, 1879, R. A. W.," the opinion of Charles B. Collier being marked "No. —, Oct. 16th, 1879, R. A. W.")

Adjourned until Monday next, October 20th, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *October* 20, 1879.

Parties met at the office of the master.

Present: The master, Mr. Mitchell, Mr. Otterson, and parties.

Cross-examination of Henry S. HALE resumed by Mr. MITCHELL:

Q. (Receipt book shown witness.) Please show me the receipt in this book that Mr. Stark gave you, when the patent was first bought from him for the one hundred or two dollars you paid him on account.

A. I answered that question.

Q. Find the receipt.

A. (Receipt produced.)

Q. Point out the receipt.

A. As I said before, I find no receipt in this book for $200.00.

Q. One or two you said?

A. Well, a hundred or two dollars.

Q. What receipt is that you have found?

A. There is a receipt here for one thousand dollars, dated May 8th, 1878, and also a due bill for $800.

Q. The due bill is dated the 23d of February, 1878, is it not?

A. Yes, sir.

Q. Did he give you this due bill at the same time that you paid him the money you speak of, when you first bought the patent from him?

A. I could not say positively whether it was at the time or not.

Q. Where is the receipt he gave you at the time?

A. I suppose it was in the receipt book, if he gave us any, but not finding it there, of course, he did not give us any, to my knowledge.

Q. Who paid Mr. Stark this money that you have spoken of—I mean who actually handed him the money?

A. Now, I could not say whether it was myself or Mr. Kilburn?

Q. Qid you give him a check or money?

A. I could not say as to that; I think it was the money.

Q. Mr. Stark was a stranger to you, was he not?

A. Comparatively so.

Q. Do you pay out as much money as that to strangers without taking any receipt or voucher for it whatever?

A. No, sir; not as a usual thing. Mr. Stark handed over his patent papers, and we only paid him part of the agreement.

238 Q. I understood you to say in your cross-examination at the last meeting that he then signed no paper except the receipt. Is that correct?

A. I could not say now that he signed a receipt.

Q. Did he sign any other paper beside a receipt?

A. No, sir; not to my knowledge.

Q. Then you paid him $200, I presume—because the due bill is for $800—without taking any assignment, receipt, or other writing?

A. I say, to the best of my knowledge, we did.

Q. Have you looked for the receipt?

A. I have.

Q. Anywhere except in the book, now?

A. No, sir; because all of our receipts are put in that book.

Q. Do you keep a book, or an account of any book, of expenses for patents?

A. No, sir—that is, no special book.

Q. Do you keep any special expense account for that purpose?

A. No, sir.

Q. Would the payment of two hundred dollars to Mr. Stark on that occasion be shown in your books anywhere?

A. It ought to be shown in the cash book.

Q. Please have the cash book which contains this entry before the examiner at the next meeting.

A. I will make a little explanation there, if you will allow me. The receipt that I stated at the last meeting was this one for the one thousand dollars that I had reference to.

Q. In whose handwriting is this due bill?

A. My own.

Q. Is that your signature as treasurer? (Signature shown witness.)

A. Yes, sir.

Q. Do you remember the occasion on which you gave him the due bill?

A. I remember it was at that time.

Q. It was the same time that you paid him the two hundred dollars?

A. I could not say whether it was the same day or the next day. I really could not say whether it was at the same time or not.

Q. Did you give him the due bill before he made the assignment to you?

A. Yes, sir; to the best of my knowledge, we did.

Q. What writing did he give you at the time you gave him the due bill?

A. He did not give us any, that I know of. He handed over his patent papers.

Q. Then, as a matter of fact, Mr. Otterson was mistaken at the last meeting when he said that the receipt which you spoke of had been in evidence long ago?

A. He was, I think. Mr. Otterson meant this receipt book, or that receipt for the $1,000. I meant that receipt.

Q. What improvements were made by your firm, or any of them, or any person represented by you now, to this process of making a folding bed?

A. What improvements? From the commencement, do you mean?

Q. Yes, sir.

A. There was an improvement made by Harrison W. Curtis.

Q. Was he the inventor?

A. Yes, sir; he was a member of our firm at that time.

Q. Mention the names of the inventors, please.

A. And Samuel M. Newcomb; he is now our superintendent; and Mr. Cheney Kilburn and myself.

Q. Are those all?

A. I think that is all.

Q. Are those all the patents you made for manufacturing the folding bed?

A. Yes, sir; I think it is—for the improvements.

Q. Were there any improvements made by a man named Stevens?

A. Yes; he made several improvements.

239 Q. Do you not hold them now, or claim to hold them?

A. We do; but we did not at that time.

Q. When did Mr. Stevens make these improvements?

A. That was a good while ago; I cannot tell you when it was.

Q. Have you the patents for them?

A. No, sir.

Q. They have been patented?

A. No, sir; I bought the improvements of Mr. Stevens, and in the writing that he gave me he agreed to sign the application for a patent, which he afterward utterly refused to do, and he left Phila-

delphia all of a sudden one day; in other words, he ran away, and we could not find him, and I have not seen him to this day. Nobody knew where he had gone to.

Q. When was this, before or after you bought Stark's patent?

A. Well, I could not say whether it was before or after. It might have been after; I won't be positive. I could not say without looking it up.

Q. Have you any memorandum here by which you could look it up and refresh your memory as to time?

A. No, sir.

By Mr. OTTERSON:

Q. Here or at the store I suppose Mr. Mitchell means; have you anything which will enable you to find out the date?

A. I can find out, I think, in the city. Mr. Howson has the papers, I think, which he drew up then for Mr. Stevens to sign.

By Mr. MITCHELL:

Q. Have you the models which Mr. Stevens made of his improvement?

A. Yes, sir; I think I have one or two.

Q. Will this help you any (due bill in receipt book, dated March 16th, 1878, to Elisha B. Stevens, for $100, on demand, signed H. S. Hale, treasurer, shown witness)?

A. I do not think that will. I think that referred to child's chariot chair. It was signed before August 9th, 1878.

Q. Will this give you any assistance (witness shown receipt in receipt book, signed E. B. Stevens, dated February 27th, 1878)?

A. No, sir; I think that relates to child's chair also.

Q. Was Mr. Stevens regularly in your employ?

A. He had been, and I think he was then travelling for us and selling some goods.

Q. Did you have dealings with him as late as the latter part of July, 1878?

A. We may have had.

Q. Did you not get models from him, or by his order, as late as that, relating to improvements on this folding bed?

A. It may have been about that time; I rather think it was.

Q. Who is Mrs. Kunzman?

A. I don't remember the name.

Q. Did you ever see that paper before (paper shown witness)?

A. Never; never.

Q. Never?

A. Never; I could say that a hundred times.

Q. Did you or your firm ever go or send there to the address mentioned in that paper and get the models referred to?

A. I went there myself and got the models. I had a written order from Mr. Stevens for a person, whoever the name is, to deliver to me certain articles, which she did.

Q. The name is Mrs. Kunzman, 606 Spruce street?

A. That is the name, then.

Q. Where is the written order?
A. I could not say; I think I delivered it to that lady.
Q. When did you get those models?
A. I got them about that time.
Q. About the latter part of July?
A. I could not say positively when it was.
Q. What was Mr. Stevens employed by your firm to do? Did you employ him?
A. At one time he made those child's chairs——
240 Q. Excuse me. Did you employ him? Answer that first, and then we will go to the other.
A. I did not, personally.
Q. Who did employ him?
A. Mr. Kilburn.
Q. Do you mean Mr. Cheney Kilburn?
A. Yes, sir.
Q. Do you know what he employed him to do with respect to the folding bed?
A. I do not know anything about the folding bed part of it.
Q. Was it before or after you got these models that Mr. Stevens left the city in the way you have mentioned?
A. It was after.
Q. Do you say you had no negotiations at all with Mr. Stevens about the folding bed, about Everitt's patent?
A. No, sir.
Q. And no correspondence with him on the subject?
A. Not that I remember.

Mr. MITCHELL: I ask Mr. Otterson to produce the telegraphic dispatch from Col. Mason that I called for at the last meeting.

Mr. OTTERSON (producing three papers): These are the only two telegrams and one letter from Mr. Mason to the defendants. The first telegraph is dated February 18th, 1878, the second February 19th, 1878.

Mr. MITCHELL: I offer in evidence the following telegram:

"WASHINGTON, D. C., *February 18th*, 1878.

"Hale & Kilburn Manufacturing Company, Philada.:

"Thistles fifty-nine patent anticipates principal features. Stark not very important. Will write. Don't pay much.

"R. MASON."

I also offer in evidence the following telegram:

"WASHINGTON, *February 19th*, 1878.

"Hale & Kilburn Manufacturing Company, Phila.:

"H. F. Nover holds license for Philadelphia under Stark. Advise securing Stark's patent.

"R. MASON."

I also offer in evidence the letter dated February 19th, 1878 (marked "No. 48, October 20th, 1879, R. A. W").

Q. (To the witness.) Did you go to Washington about this matter at all?

A. No, sir.

Q. Which members of your firm went besides Mr. Cheney Kilburn?

A. No one that I know of.

Q. He went?

A. Yes, sir.

Q. Did Mr. Stevens go with him?

A. Not that I know of.

Q. Who attended to the advertising of your company?

A. Usually Mr. Roberts and myself. I attended to the greater part of it.

Q. Who put this advertisement in "The Trade Bureau?"

(Advertisement shown witness.)

A. I think Mr. Roberts did that.

Q. Who put this advertisement in "The Upholsterer and Carpet Reporter," of Boston, October 4th, 1879?

A. I think he did that at the same time. I think those two advertisements were made up at the same time.

Q. Are not these (three wood-cuts shown witness) three pictures of folding beds in the "Upholsterer" the same as you had advertised for the last five years?

A. The same cuts, but the larger ones at the bottom are new ones.

Q. How about the automatic folding crib?

A. That is a new one.

Q. Who occupies your branch store at 706 Broadway, New York?

A. Mr. John S. Lindsey is manager for us there.

Q. Who is your manager at 535 Washington street, Boston?

A. Mr. N. L. Stebbins runs the store entirely at his own expense.

241 Q. Who occupies your branch store at 182 West Baltimore street, Baltimore?

A. Mr. D. C. Burson occupies that, in the same way; he runs that store in the same way.

Q. Why did you advertise two or three furniture companies in Chicago as your branch stores?

A. The only way I can account for that is that it is a mistake. That ought not to have been there, because they are not branch stores. They have no interest with ourselves.

Q. How long a time did that mistake appear in the public papers as an advertisement?

A. The first time I ever saw it was when Mr. Mitchell showed it here, the other day, in the office.

Q. Do you know how long a time it was advertised?

A. Not a great while; I could not say positively.

Q. Were the arrangements that you had with the Toby Furniture

Company substantially the same as you had with Mr. Stebbins and the furniture company in Baltimore?

A. They were a little different.

Q. Wherein were they different?

A. The Toby Company order and buy the goods right out, and pay us for the same every sixty days; send us a check for the goods, whatever they may be, no matter what amount it may be; and with the Boston store and the Baltimore store we send the goods on consignment.

Q. Will you let me see the letter of April 10, 1878, from Colonel Mason?

A. Yes, sir (Letter produced.)

Q. Where is the envelope in which that letter came?

A. I do not know where it is.

Q. Did you show this letter to Mr. Everitt?

A. I did; on the morning of its arrival.

Q. Did you have any conversation with him about the envelope it came in?

A. No, sir; I do not remember that any conversation was had about the envelope.

Q. Did he not ask for the envelope?

A. I do not remember that he did.

Q. Did he not ask you to keep the envelope?

A. I do not remember of his saying anything of that kind. I do remember of his telling me to preserve the letter, which I did.

Q. Did not he ask you to preserve the envelope?

A. No, sir; not to the best of my knowledge. We put our envelopes into the waste-basket.

Q. How did Mr. Mason come to write your company this letter, when you yourselves were the owners of the Stark patent and his clients?

A. Mr. Mason did that entirely on his own responsibility. I would like to make a little explanation here.

Q. Certainly; by all means.

A. We acted in bringing that suit entirely under the advice of Mr. Mason; and, furthermore, I will say that Mr. Otterson did not know anything about it at the meeting in your office.

Q. I never thought he did; I knew all about it myself, but I knew also that he was ignorant. I knew then all about it, as much as you did.

A. We acted entirely under Mr. Mason's advice.

Q. How did Mr. Mason come to write you that he was prepared to negotiate for terms of license for you to use Stark's patent at the time when he, as your counsel, knew you were the owners of the patent?

A. I could not tell you how he happened to do that.

Q. What passed between you? What did you tell Mr. Everitt about this letter when you showed it to him?

A. I told him I would preserve it. He asked me for a copy of it that afternoon or the next day, and I told him I would hunt it up;

I had already laid it aside, and have a copy of it made for him, which I did.

242 Q. Why did Mr. Mason tell you you were infringing the patent of his client, A. Stark, when he knew perfectly well it was your patent, and not Stark's?

A. He must have had an object in doing it; I do not know what it was.

Q. What did you understand when you first saw this letter? Did not you know what he meant?

A. Mr. Kilburn and myself had tried our very best to do something with Mr. Everitt before we purchased the Stark patent, and he refused to have anything to do with us; said that it was good for nothing; that he knew all about it long ago, long before we purchased his patent of him, and Mr. Mason brought that suit, I suppose, thinking, perhaps, it might have some bearing on Mr. Everitt.

Q. I am not speaking of the suit; I am speaking of the letter which you showed to Mr. Everitt as soon as you got it; why did you show it to Mr. Everitt?

A. Because Mr. Mason told us to show it to him.

Q. Did you tell Mr. Everitt that you had bought Stark's patent?

A. I did not tell him.

Q. What did you say to him when you showed him this letter; at the time you showed it to him; I do not mean about keeping it, but at the time you showed it to him what did you say?

A. I do not remember what was said; I just handed it to him, and he read it and told me to preserve it.

Q. Is the bed called "No. 16 bed," made by your company, made under a patent?

A. Yes, sir.

Q. Did you have the date of the patent put upon each manufactured article, according to law?

A. We endeavored to do it.

Q. Did you or not have Mr. Everitt's patent put on that bedstead always?

A. No, sir.

Q. Did you have it always put on the No. 16 beds up to the first of this year?

A. We had it up to a certain time; the time I could not say when we left it off.

Q. Was it not after this suit commenced?

A. It might have been, although the packer had orders to leave it off.

Q. When did you give him those orders?

A. When we first commenced to make them.

Q. When did you first commence to make them?

A. I could not tell without referring to the books.

Q. Refer to the books and tell.

A. (Referring to the books.) About in the first part of 1878; I find one in April.

Q. Did you not have the date of Mr. Everitt's patent marked on No. 16 beds from that time up to the beginning of this year?

A. I could not say.
Q. Did not you yourself give orders that it should be done?
A. I gave orders that it should be left off.
Q. You did?
A. Yes, sir.
Q. To whom did you give orders?
A. To our packer.
Q. What is his name?
A. Hugh McComb.
Q. Do I understand you to say that your 16 beds had not the date of Mr. Everitt's patent upon them?
A. No; I did not say that.
Q. Exactly; what did you say?
A. I say up to a certain time they had dates on.
Q. Can you say when that time was?
A. No, I cannot.
Q. Can you find out and let me know?
A. I will try to.
243 Q. As to No. 11, did not that have the date of Everitt's patent upon it?
A. I think so, up to a certain time.
Q. Did not No. 18 have the same?
A. Up to a certain time; yes, sir. We had the stencil-plate for the whole number of patents.
Q. Did it have the date of the improvements you have mentioned on it also—these bedsteads?
A. Yes, sir.

By Mr. OTTERSON:

Q. And you used that always universally, in a uniform manner?
A. Yes, sir; we used it always universally, and that is why it was not left off when it ought to have been.

By Mr. MITCHELL:

Q. How about beds No. 10 and 17?
A. They are in the same order.
Q. They all had the date of the patents on them, up to a certain time?
A. Yes, sir; we do not make No. 10 beds any more.
Q. When did Mr. Kilburn and Mr. Everitt have any talk about Stark's patent; before or after this letter from Col. Mason?
A. It was before.
Q. How long before?
A. It was the first part of February, 1878.
Q. Where were they when they had that conversation?
A. In our office.
Q. Who was present?
A. I was present.
Q. Any one else?
A. My brother was in and out quite frequently. I do not remember of any one else being there.

Q. Was it on more than one occasion?

A. Yes, sir; several.

Q. When was the first occasion—was it before or after you had seen Stark?

A. It was after.

Q. Was it before or after Mr. Kilburn had been to Washington about it?

A. It was before.

Q. Was it before or after you had bought Stark's patent?

A. It was before.

Q. Tell what took place; what did Mr. Kilburn say?

A. I cannot repeat all that was said, there was so much said, but Mr. Kilburn informed Mr. Everitt that Stark was here, or had been here, and that Stark offered to take $1,000 for the patent.

Q. Do you recollect that Mr. Kilburn told Everitt that?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Go on and tell what was said.

A. First, he asked if he would not purchase it, or do something about it. Mr. Everitt refused; said it was good for nothing; that he would not have nothing to do with it, and that he knew all about it long ago, long before we ever purchased his patent.

Q. Were you not present on one occasion when Mr. Cheney Kilburn said that Stark wanted $30,000 for his patent?

A. I do not remember any such conversation.

Q. Do you remember any such remark made by Mr. Cheney Kilburn in Mr. Everitt's hearing?

A. No, sir; I do not. I do not think he ever said anything of the kind. As I said before, I did not hear all that was said at those meetings.

Q. Did not Mr. Kilburn want Mr. Everitt to give Stark five out of his seven per cent. royalty?

A. There might have been something said about that. I cannot say positively.

Q. Do you not remember that that was said?

A. I remember there was something said about dividing royalty, or something to that effect; but Mr. Everitt always refused, and would not have anything to do with it. We could not get the slightest offer out of Mr. Everitt in any way, shape, or form—never was able to.

244 Re-examined by Mr. OTTERSON:

Q. Did you hear Mr. Kilburn say anything to Mr. Everitt about $30,000, with reference to any patent?

A. Really I could not say. I will say this much that there was good deal said about the Maine patent afterward, and the Maine parties, in Boston, did ask $20,000 for their patent at one time. Perhaps that is where he got his big figures from; I do not know.

Q. Did you tell Mr. Everitt that, or did Mr. Kilburn do it in your presence?

A. It seems to me there was something said about that; I could not say positively.

Q. Do I understand you to say that this interview you have just spoken of between Mr. Kilburn and Mr. Everitt was before you had seen Mr. Stark?

A. I did not think I said so; I did not mean to say so, if I did. It was after I had seen Mr. Stark.

Mr. OTTERSON: At this point I offer in evidence—

The model of Stark's patent. (Marked "No. 49, October 20th, 1879, R. A. W.)

I also offer the same model, with the corner pieces, which extend the side bracket on the foot-board above the side rail or box when it is closed, which made the Everitt patent. (The corner pieces, marked "No. 50 A, October 20th, 1879, R. A. W.," and "No. 50 B, October 20th, 1879, R. A. W.")

Also the spring bed used in same. (Marked "No. 51, October 20th, 1879, R. A. W.")

Also the model of the Maine patent. (Marked "No. 52, October 20th, 1879, R. A. W.")

Also the model of the No. 16 bed. (Marked "No. 53, October 20th, 1879, R. A. W.")

(Also a copy of the record of the Patent Office, under date of April 10th, 1879, referring to the application for the Everitt patent.)

Mr. MITCHELL (to Mr. Otterson): What is the purpose of this offer?

Mr. OTTERSON (to Mr. Mitchell): We will discuss that one of these days.

(The offer objected to by Mr Mitchell, as the evidence is not material to any issue before the master. The exhibit marked "No. 54, October 20th, 1879, R. A. W.")

Adjourned until Monday next, October 27th, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *October 27th*, 1879.

Parties met at the office of the master.

Present: The master, Mr. Otterson, Mr. A. I. Philips, representing Mr. Mitchell and parties.

CHARLES HOWSON sworn and examined by Mr. OTTERSON:

Q. You are a member of the firm of Howson & Son, are you not?

A. Yes, sir.

Q. What do you call your profession; patent lawyers are you not?

A. Solicitors of patents; patent lawyer is my own profession.

Q. Did you draw a contract between Mr. Everitt and the Hale & Kilburn Manufacturing Company?

A. I did.

Q. With reference to the Everitt folding bedstead?

A. With reference to a patent of Mr. Everitt for a folding bedstead.

Q. In what shape was it brought to your attention originally?

A. My recollection upon that point is that Mr. Henry S. Hale came to me to formulate, or put in proper shape, a contract which was already virtually concluded between his firm and Mr. Everitt, with reference to the patent I mentioned.

Q. Is that (paper dated March 17th, 1874, signed Hale, Kilburn & Co., with receipt of same date for $75, signed by Elisha E. Everitt, shown witness) the paper he produced?

A. I cannot say that I recollect this paper——

245 Q. You do not recollect anything of this?

A. My answer was not complete, although I find something upon the face of this paper which satisfies my mind that I had it before me. I refer to the words "impts lawsuits ½—½ receipts for rights sold," which I recognize as being in my handwriting.

Q. Who constitute your firm, please?

A. My, father, Henry Howson, and myself.

Q. You prepared a contract?

A. Yes, sir.

Q. State, if you please, what you knew at that time about the Stark patent, as it is called?

A. I am quite certain that I knew nothing at all about the Stark patent. No instructions were given to me to look into the question of any prior or other patent, but simply to put a contract into form, and to that my attention was confined.

Q. Have you ever known of the Stark patent?

A. I do know of the Stark patent, and, to the best of my recollection, my attention was first drawn to it within 18 months last past.

Q. Mr. Everitt says: "When Mr. Howson, their agent, went to draw the contract between the two parties, they and me, he said the patent would have to be reissued—and for what reason? On the reason of the Maine's and the Stark's patents, he said;" is that true, or is it not?

A. If, by Mr. Howson, Mr. Everitt referred to myself, it is certainly not correct.

Q. You knew nothing then of the Stark patent?

A. No, sir.

(Cross-examination reserved.)

HENRY HOWSON sworn and examined by Mr. OTTERSON:

Q. You are the senior of the firm of Howson & Son?

A. Yes, sir.

Q. Solicitor of patents?

A. Yes, sir.

Q. Do you know anything about this agreement?

(The paper of March 17th, 1874, shown witness.)

A. I recollect this paper.

Q. Please state where it came from and what happened.

A. It was brought to me by Mr. Hale.

Q. Go on and state what you did withit, and whether you had any interviews with Mr. Everitt in reference to it?

A. I cannot state exactly what was done with the paper, immediately.

Q. What was the purpose of its being brought to you?

A. I think I handed it to my son, who attended to all agreements; I found the paper in a box on my table recently, within the last week or ten days.

Q. Is that the basis of the contract which was afterward prepared and executed between the parties?

A. That, I understand, was the basis of the contract which was drawn up by my son.

Q. Did you ever have any interviews with Mr. Everitt relating to the business?

A. Relating to the agreement, do you mean?

Q. Yes, sir; relating to the preparing of that contract, and so on.

A. The interviews relating to the contract were held mainly with my son. I had something to say about two or three of the items.

Q. Did you require a reissue to be applied for, before the contract was issued as it was executed?

A. Upon consulting with Mr. Kilburn——

Q. In the presence or absence of Mr. Everitt?

A. With Mr. Everitt, afterward.

Q. Just state what took place in the presence of Mr. Everitt in the presence of Mr. Kilburn.

A. I told Mr. Kilburn that it would be a very foolish thing for him to buy that patent and make a final agreement, unless Mr. Everitt signed the necessary reissue papers. I prepared the reissue papers.

246 Q. Did you confer with Mr. Everitt about it?

A. Mr. Everitt decidedly objected to signing for a long time. Finally he did sign them. (Papers produced.)

Q. Did you say, before the contract referred to between the parties was signed, "that the patent would have to be reissued on account of the Maine's and Stark's patent"?

A. No, sir.

Q. What was your reason for requiring a reissue?

A. Under the laws that exist at present every application for a reissue of a patent granted subsequently to the year 1870 must be signed by the inventor. I have had many instances of men buying a patent without the reissue, and, when they found it necessary to reissue, the inventor demanded additional sums; and I was determined that should never occur in my office if I could help it. It is a precaution which I take, invariably.

Q. Did you know at the time that contract was signed of the existence of the Stark patent?

A. No, sir.

Q. Did you learn of it afterward; and when, for the first time?

A. I do not recollect when I heard of it afterward. One day Mr.

Kilburn came into my office and told me of it, but I cannot tell how long afterward; it may have been some months afterward.

Q. Then it is not true that you insisted upon the reissue of the Everitt patent because of the existence of the Stark patent with the Maine's?

A. Certainly not. I knew nothing about it for the reason assigned. I did not know anything about it.

Q. I understand you to say that you were called upon simply to formulate, as your son has expressed it, an agreement already in existence, and not to make an examination of the state of the art?

A. I was not employed to make an examination of the state of the art; on the contrary, I scolded Mr. Kilburn for signing that agreement without an examination.

Q. Did you have any interview at all with Mr. Everitt on the subject of this reissue, either in the presence of Mr. Kilburn or alone?

A. Mr. Everitt called on me, I think, twice; told me that there was no necessity for a reissue, and did not want me to make an application for a reissue, and seemed very anxious I should not make the application.

Cross-examined by Mr. PHILIPS:

Q. Did Mr. Everitt ever ask you why you wished the reissue?

A. I do not know whether he asked me why, but I know he knew why. He knows the reason.

Q. You stated that Mr. Everitt objected to signing the reissue. Did he explain to you the ground of his objection?

A. No, sir; I never knew. I could not understand the reason. I think he said that the patent was good enough, or something of that sort.

Q. Do you remember when the reissue papers were signed?

A. They were signed on the same day as the agreement, I think; I am not quite certain. If you will allow me to look at the papers I can tell. They were signed, evidently, on that day, I think, the 16th of April. (Referring to the papers.) They must have been signed on that day.

Q. Were those reissue papers used?

A. No. They have remained in my possession ever since they were executed, with the understanding of all parties that they were so to remain.

Q. Why were they not used?

A. For the simple reason that subsequently it was discovered that the patent was about as good as could be got for the invention; in other words, that the invention was covered by the original patent, as far as it could be covered.

Q. How soon after the signing of the contract was it found out that the patent was good?

A. I beg your pardon; I did not say that the patent was good. As good as circumstances would permit of.

247 Q. "As good as circumstances would permit of?"

A. A few days afterward.

Q. By what means was that discovered?

A. (Producing a paper.) That is a letter from my clerk in Washington. I wrote to him that it was quite likely I might have to reissue this patent, and to look at the file and find out somewhere near what the condition of the patent was by an examination of the file. That is the reply I got.

Q. Was any opinion of a patent lawyer obtained upon Mr. Everitt's at the time of making the contract?

A. Not that I am aware of; certainly not in my office.

Q. Was not the opinion of Mr. Harding obtained upon Mr. Everitt's patent?

A. Really, I do not know.

Q. Did you ever hear that Mr. Collier gave a written opinion upon Mr. Everitt's patent?

A. No, sir.

(The letter produced by the witness offered in evidence by Mr. Phillips, and marked "No. 55, Oct. 27th, 1879, R. A. W.," and further cross-examination reserved.)

Re-examined by Mr. OTTERSON:

Q. What is the paper that you have just produced?

A. It is a reply to a memorandum of my own to my clerk in Washington.

Q. Your inquiry was what?

A. I think my inquiry was that I might have, possibly, to reissue the Everitt patent, and to look at the file and see what he could find there. That reply came.

Q. Does the reply refer to the Stark patent at all?

A. No, sir; it was this paper which induced me to think that it would be hardly worth while to reissue the Everitt patent. I would like to add that that is a step I always take when I contemplate reissuing a patent.

Q. To have such an examination made?

A. Yes, sir; and not a search of the state of the art.

CHENEY KILBURN sworn and examined by Mr. OTTERSON:

Q. You are the president of the Hale & Kilburn Manufacturing Company?

A. Yes, sir.

Q. Did you ever forbid Mr. Everitt examining the books of your concern?

A. No, sir.

Q. What passed on that subject?

A. I put him off for a day or two.

Q. Refused him only for the time?

A. Yes, sir; that is all.

Q. And then?

A. I left word with our head book-keeper that if Mr. Everitt came in to let him have the books.

Q. Did Mr. Everitt see you again on that subject?

A. I do not think he did.

Q. Then you do not know, of course, what passed, except from the report of the book-keeper?

A. That is all.

Q. (Exhibit No. 40, the letter of April 10th, 1878, shown witness) Were you present when that letter came to hand?

A. Yes, sir.

Q. State, if you please, whether the date of it was ever altered in your office to your knowledge?

A. It never was, to my knowledge.

Q. Do you know whether or not it was shown to Mr. Everitt?

A. It was; the very day it was received.

Q. Where?

A. At our office; our front office, as we call it.

Q. Was any question raised about the absence of the envelope?

A. Not in my hearing.

Q. Mr. Everitt says that the envelope was absent, and he wanted it; that you hunted for it and could not find it. Is that so or not?

A. It is not so.

248 Q. He says that the envelope when found was marked "received at the Philadelphia post office at 6 o'clock on the morning of the fifth of April." Is that true or not?

A. I do not know anything about that. We strip the envelopes off and put them in the waste basket.

Q. Was it a subject of discussion between you at all, when the letter was produced?

A. Not at all.

Q. Do you remember his telling you, or Mr. Hale in your presence, to be sure and preserve the letter and preserve the envelope?

A. I heard him say he wanted us to preserve the letter, but never heard him say anything about the envelope.

Q. Mr. Everitt says that you knew all about the Stark patent before you made your contract with him. Is that true or not?

A. Not true.

Q. When did you first know of the Stark patent?

A. When Mr. Stark came on.

Q. Do you remember about when that was?

A. That was the very first of February; it might be the last of January, 1878. I did not see Mr. Stark at that time. I got my information from Mr. Warren Hale.

Q. When did you first see him yourself?

A. It was several days after. I should say several days afterward. I do not recollect exactly.

Q. How soon after you first saw him, or heard of his being here, did you communicate to Mr. Everitt the fact of his presence or the fact of his visit?

A. At once; immediately. In fact, Mr. Everitt knew it sooner than I did, because Mr. Warren Hale told Mr. Everitt. I was out of the store at the time Mr. Stark came in, but Mr. Warren Hale told Mr. Everitt that there had been a man there by the name of Stark, from the West, who said we were infringing on his patent. And that very afternoon I heard the same thing.

Q. Had you ever heard of the existence of the Stark patent before you heard of the visit of Mr. Stark?

A. Never in my life.

Q. What steps did you take when you learned of the existence of the Stark patent; what was the first step?

A. Well, we tried to have Mr. Everitt—we looked into the matter a little, began to look it over, and made up our minds that we were infringing, and we tried to have Mr. Everitt do something. We tried to do something with him, and to see what was the best to do about it.

Q. Did you consult counsel on the subject of infringement?

A. I think we did.

Q. Who?

A. Well, I guess it was the old gentlemen, Mr. Henry Howson. I am not satisfied we did right off, for a day or two; but we were satisfied in our own mind, when we came to look the matter up, that we were infringing.

Q. Did you consult other counsel besides Mr. Howson?

A. Yes, sir.

Q. Who?

A. We consulted Mr. Mason, of Washington.

Q. In consequence of your advices from Mr. Mason, what did you do to Mr. Everitt or say to him?

A. We told him there would have to be something done about it; that it was a plain infringement. He said it was good for nothing. He said he knew all about it long ago; long before he bought his patent. Said he, "That is good for nothing; I won't give one cent toward it; I knew all about it long ago; it is good for nothing."

Q. Well, you bought it finally?

A. Yes, sir; we bought it.

Q. Did you tell Mr. Everitt what it could be bought for?

A. Yes, sir.

Q. What?

A. One thousand dollars.

Q. Did you ever tell him it would cost thirty thousand?

A. No, sir; never.

249 Q. Did you ever tell him it would cost any other sum than one thousand dollars?

A. No, sir.

Q. What sum did it cost?

A. It cost one thousand dollars.

Q. State whether that purchase was or was not in pursuance of the advice of counsel.

A. It was done under the advice of Col. Mason, of Washington.

Q. He had been counsel for you in other matters previously?

A. Exactly; yes, sir; he said we would have to buy it or stop.

Q. In what connection did you use the term thirty thousand dollars, if at all, in connection with Mr. Everitt?

A. I used the term in reference to the Maine patents. The Maines had two or three patents. Soon after we bought Mr. Everitt's patent Mr. Everitt and ourselves thought we had better see what we could

buy all the Maine patents for. Mr. Howson thought it would be a good idea to buy them up; so I went to Boston expressly to buy them. I saw Mr. Maine, and he would not sell them for less than $20,000—his two or three patents, whatever they were. After running along—well, in 1878, I think—they got incorporated with a company. They formed a company there. I think there was thirteen of them in a company. (The testimony objected to by Mr. Philips.) They got up a company and got a reissue, reissued their patents, and they came on and notified us, you know, that we were infringing. I told Mr. Everitt, said I, "You well know that when it was in Mr. Maine's hands he asked us $20,000. The probability is that we shall have to pay $30,000, now it has got into this company's hands." That is the way of it, and Mr. Townsend, the president of that company, had been out here, was here along about that time—along about June or July, 1878—and Mr. Everitt saw the correspondence that passed between Mr. Townsend and myself.

Q. Was anything said to Mr. Everitt about assisting in buying the Maine patent?

A. Yes, sir; he said they were good for nothing; he would not give one cent to let them snap their whip.

Q. State whether or not you were advised that it interfered with the Everitt patent, or the Everitt patent interfered with it.

A. We were; we were advised.

Q. By whom?

A. Col. Mason.

Q. Did you buy the Maine patent?

A. Yes, sir.

Q. At what price?

A. I think it was $6,000.

Q. Did you tell Mr. Everitt?

A. I told him we had bought it; I do not know as I told him the price; I don't know as it was but five; I won't be certain.

Q. Did you ask him to contribute?

A. Yes, sir.

Q. What did he say?

A. That he wouldn't give one cent; it was good for nothing.

Q. Mr. Everitt complains that for a year or more from the commencement of business under this contract he was not able to get any account from the firm of the number of beds sold. What is the truth on that subject?

A. I never knew but what he could get his account if there was any sold. There was a long time; we put in nearly a year before we sold any; it was a long time; I could not say exactly.

Q Was there any reason why he should not have an account?

A. I think about the time we got started he opened a store on Chestnut street. I think he was to pay about twenty-two hundred or twenty-three hundred dollars rent, and he done a verysmall business, and he was not able to pay the rent, and we paid it—
250 advanced the money. He would come in and get the money every month, and we would give him a check for the money,

and I guess he was owing us for the course of two years is my impression now.

Q. What do you know on the subject of discounts? He complains that your basis of settlement with him was at a higher rate of discount than your actual sales.

A. When we first began to sell them we made an agreement that it would be the very lowest wholesale price; that was what we were to make his royalty from. We had a number of discounts; quite a number. I am not able to state how many. I have not had much to do with the books, but I know there was quite a number. But the agreement was the very lowest wholesale price, which should be figured up once a month.

Q. Did you ultimately agree upon a standard rate without reference to the variation of discount?

A. Yes, sir; it was to be the very lowest—the very lowest.

Q. I know; but did you ultimately agree upon a particular rate of discount which would be the basis of your settlement with him?

A. No, sir.

Q. What was your lowest rate of discount in your wholesale sales?

A. There was a house in the West, the Toby Manufacturing Company, and there was a time we took off 43 per cent., but we never asked Mr. Everitt to allow that.

Q. How did you settle with him for those?

A. One-third off, I think.

Q. Did you ever hear any complaints about these discounts?

A. Not one word. When we would get to taking off more discounts to the trade he said he was glad of it; that it would give the trade a better chance; that there was not enough encouragement for them before, when we were taking off 25 or 30, and that he was glad of it.

Q. Why?

A. Because we could sell more beds.

Q. Then he never complained——

A. Never one word.

Q. That you were not accounting to him according to your agreement and understanding?

A. No; he always seemed to be perfectly satisfied.

Q. When did you first hear his complaints?

A. That was the time that this suit commenced.

Q. He complains that you did not allow him royalty on mattresses and spring bottoms, and ebony and gold finish, and some other things. Did you make mattresses and spring bottoms before you had this folding bedstead at all?

A. I do not know. I do not recollect whether we did or not; I think we did.

Q. Was it a part of your business?

A. It was a part of our business; we were not in the furniture business very much at the time we took hold of the folding bedstead; we were in the picture-frame business. The bed business drew us into a general assortment of furniture.

Q. But spring bottoms and mattresses were in the market long before the folding beds, were they not?

A. Yes, sir; I think long before I was born.

Q. Can you tell us when Mr. Everitt was invited to become a party to the purchase of the Stark patent?

A. In the early part of February, 1878.

Cross-examination reserved.

Adjourned to Monday next, November 3d, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *November 3d*, 1879.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, and Mr. Kilburn.

(Mr. Bowman on call produces letter from the defendant's counsel to plaintiff's counsel, dated November 22d, 1878, which is offered in evidence by Mr. Otterson and marked "No. 56, November 3d, 1879, R. A. W.")

251 JAMES W. FLETCHER sworn and examined by Mr. OTTERSON:

Q. You are a clerk in the office of the court of common pleas?

A. I am.

Q. Have you a sealed envelope which was deposited by me with the prothonotary?

A. Yes, sir: which I now produce. (Envelope produced.) I do not remember the date of its deposit or its contents.

(The endorsement directed to be noted of record, as follows: "To Messrs. Wendell P. Bowman, Esq., or E. Coppee Mitchell, Esq., counsel for plaintiff in case of Everitt and Hale *et al.*, C. C. P., in Eq., No. 4, for Sept. T., 1878, No. 564, or if not accepted by them, or either of them, on or before January 1st, 1879, then the same may be withdrawn by James Otterson, Esq., counsel for defendants, if he shall so elect. The privilege of accepting the same by parties first named, or either of them, is continued, however, until the paper shall be actually withdrawn by said Otterson. James Otterson, 11–22–'78.")

Q. Have you any reason to suppose this envelope was not deposited at the time it bears date?

A. I think that is about the exact date, about the day, the 22d of November, 1878.

Mr. Otterson opened the sealed envelope in the presence of the master, and took therefrom three several papers—

First. The original agreement between Elisha Everitt and Henry S. Hale, Artemus Kilburn, J. Warren Hale, H. W. Kilburn, Cheney Kilburn, and Warren Hale.

(The agreement offered in evidence by Mr. Otterson, and marked "No. 57, Nov. 3d, 1879, R. A. W.")

Second. The reassignment of the letters patent for improvements in wardrobe bedstead No. 148,840 by the Hale & Kilburn Manufacturing Company to Elisha E. Everitt, the plaintiff.

(Offered in evidence by Mr. Otterson, and marked "No. 58, Nov. 3, 1879, R. A. W.")

Third. The statement that the assignment of this patent from Hale, Kilburn & Company to the Hale & Kilburn Manufacturing Company was included with the assignment of other patents in the same instrument, and was dated the 11th day of January, 1877, and recorded in Washington, in liber G 21, page 206, of transfers of patents.

(Offered in evidence by Mr. Otterson, and marked "No. 59, Nov. 3d, 1879, R. A. W.")

It is agreed that these papers shall be left in the hands of the master the same as any other exhibits, and not returned to the court.

CHARLES HOWSON cross-examined by Mr. BOWMAN:

Q. You stated, in your examination-in-chief, that you drew a contract between Mr. Everitt and the Hale & Kilburn Manufacturing Company; will you state what the contract was.

A. The contract I referred to was one between Mr. Everitt and the Messrs. Hale, Kilburn & Company, or, to speak more exactly, I suppose I might say a contract between Mr. Everitt and the members of the firm of Hale, Kilburn & Company. The general purport of the agreement was to give to Hale, Kilburn & Company the right to manufacture and sell a certain patented bedstead upon certain terms and conditions which I will not undertake to repeat from memory.

Q. Look at that paper (Exhibit No. 57 shown witness) and state whether that is the paper you referred to.

A. That is the paper I mean.

Q. When did you first learn of the Stark patent?

A. The time I cannot definitely say, but to the best of my recollection within 18 months last passed.

Q. From whom did you first derive your information?

A. That question I cannot positively answer. I can only say that it came to my attention in the course of a conversation or conversations with Mr. Henry S. Hale.

252 Q. You are solicitors—your firm—for patents, are you not?

A. We are either patent solicitors or patent agents, whichever you choose to call it.

Q. Have you any recollection of ever speaking to Mr. Everitt on the subject of the Stark patent?

A. Not the slightest.

Q. At the time that paper was drawn do you remember speaking to Mr. Kilburn of any patent excepting the one mentioned in the agreement?

A. No, sir; not the slightest.

Q. Your duty was simply to formulate that agreement and put it in proper shape?

A. That was the case.

Q. You had nothing to do with the examination of the record or to ascertain the state of the art of the patent, had you?

A. No, sir.

Re-examination of HENRY HOWSON resumed.

Before Mr. Henry Howson was re-examined he requested that his testimony given at the preceding meeting should be read to him in full, which was done by Mr. Bowman, and pronounced by the witness to be correctly reported; and the witness said that he desired to correct an answer.

By Mr. OTTERSON:

Q. You said during the reading of the minutes that there was something you wanted to correct in reference to the period after the signing of the original agreement in which you heard of the Stark patent. What have you to say on that subject?

A. I wish to say that it may have been more than a year.

Q. By whom was that first called to your attention—the subject of the Stark patent?

A. I think by my son; and I would like to add to that that when I say I heard of the Stark patent I mean I heard of the existence of such a patent; I do not know what the patent is now; I could not describe it; the whole subject passed from my mind after the execution of the deed; I mean the whole subject relating to this bedstead matter.

Q. Your son states in his testimony that he heard of it first, as near as he can recollect, some 18 months ago, or thereabouts; then you only heard of it after he heard of it; you heard from him first?

A. It may have been about the same time; I cannot call all these little matters to mind.

Cross-examined by Mr. BOWMAN:

Q. Do you remember when you first heard of it?

A. No, sir; I cannot remember exactly; I do not remember within months.

Q. Can you tell me what you did hear at that time?

A. All that I did hear was that there was a patent granted to Stark which appeared to interfere in some way or other; the conversation was in the next room, I think, with my son, and I might have heard some part of the conversation; we have two adjoining rooms.

Q. With whom was he in conversation?

A. I do not know whether it was with Mr. Kilburn or Mr. Hale; it was one of them.

Q. Had they employed you to examine into the state of the art of this patent?

A. No, sir.

Q. I mean the Everitt patent?

A. I know—no, sir; what I did was entirely voluntary; in fact, when I advised them to adopt that course, they said no; that they had been satisfied, or something of that sort; I recollect I scolded them pretty well for doing it.

Q. Did they employ your son to examine into the Stark patent?

A. Into the state of the art, do you mean?

Q. Yes, sir; to examine into the state of the art of the Stark patent?

A. No, sir; it was not his duty to do so.

253 Q. Can you tell how it happened that they called your attention to it, whenever that time was?

A. I rather think it was a conversation in the next room with my son—I hearing something going on there as I walked backward and forward, and probably Mr. Kilburn himself may have mentioned it afterward.

Q. Might this have been about six months after the agreement was signed?

A. I think it was more than that.

Q. But you have no recollection of the subject of the Stark patent being mentioned when the agreement was being prepared for execution?

A. Not the slightest mention of it.

Q. Do you remember Mr. Everitt wanting to know why you wished him to sign the reissue papers?

A. I think I explained to him the object. At any rate he knew the object. I am satisfied about that. He knew that it was a precaution that I always took.

Q. Whom did you represent in the matter at that time?

A. In preparing the reissue papers?

Q. Yes, sir.

A. I represented Mr. Kilburn or the Messrs. Hale, Kilburn & Company—the firm, I suppose. I had been doing other business for them.

Q. The Everitt bedstead was never reissued, was it?

A. No, sir; not to my knowledge.

Q. You considered that the original papers covered the invention sufficiently without reissue?

A. I will have to explain that matter. As soon as I received the notice of the Maine patent, and began to compare the Maine patent and other patents with it, which are mentioned in the paper, I think, I came to the conclusion that it was a useless task to patch up such a bad patent, such a weak patent, as the Everitt.

Q. From whom did you receive the notice of the Maine patent?

A. From my clerk in Washington. I may add too it that if my clerk had done his duty I would have known of the Stark patent, for I have found quite recently that the Everitt application for the patent was rejected on reference to the Stark patent, and it was my clerk's duty to have referred to that fact in that paper.

Q. It is not an uncommon thing for an application to be rejected, is it?

A. No; it is quite a common thing. It is more common than otherwise. You can see letters rejecting them in my office every morning.

Q. It is more common for them to be rejected than to be received, is it not?

A. Than to be granted without objection.

Q. Then the objections are afterward generally overcome and the letters are granted?

A. Very often granted for the reason that the claims are reduced, and for other reasons.

Q. Then the rejection of the Everitt patent was no exception to the rule?

A. No.

Q. And it was afterward accepted and the letters issued?

A. Not in its original form, I believe.

Q. Then you are not positive about it, are you?

A. I am nearly positive. The papers were shown to me the other day, the file and contents. But, of course, I would not like to be positive. I think some of the claims were struck out.

Q. But that you are not positive of?

A. No.

Q. And it was afterward accepted and letters issued?

A. Yes, sir.

Adjourned until Thursday next, Nov. 6, 1879, at 2 p. m.

254 PHILADELPHIA, THURSDAY, *November* 6, 1879.

Parties met at the office of the master.

Present: The master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, Mr. Kilburn.

Cross-examination of CHENEY KILBURN by Mr. MITCHELL:

Q. When was the Hale & Kilburn Manufacturing Company formed?

A. I do not recollect the exact time; I think about two years ago.

Q. What was the name of the concern before that?

A. Hale, Kilburn & Co.

Q. Who composed that firm?

A. H. S. Hale, J. Warren Hale, Warren Hale, Artemus Kilburn, Mr. Curtis, and myself.

Q. Did those persons composing the firm take stock in the manufacturing company?

A. Yes, sir; all except Mr. Curtis, who died.

Q. Did he die before the company was formed?

A. No, sir; he did not; he went out of the concern. It was dissolved before we formed the manufacturing company.

Q. How did you divide the stock of the manufacturing company?

A. I do not recollect just exactly how we divided it. It was divided amongst the partners.

Q. Did the same partners who owned the interests in the Hale & Kilburn Company own all the stock in the Hale & Kilburn Manufacturing Company?

A. I do not understand you.

Q. Were there any new persons taken in at the time you made the new company?

A. I do not think there were.

Q. I understand you, then, that the stock of the company was divided amongst the partners of the firm?

A. Yes, sir; I think in a short time after we formed the company there was a young man who took a couple of thousand dollars of stock.

Q. Who was he?

A. I could not say what his name was; he was a man who lived in Troy. He was a nephew, or some connection of, Mr. Hale's family. I do not recollect his name.

Q. Who did he get his stock from?

A. Mr. Warren Hale.

Q. Have you regular transfer stock books of the company?

A. Yes, sir.

Q. And certificates of stock?

A. Yes, sir.

Q. (Exhibit No. 40, the letter from R. Mason to the Hale & Kilburn Manufacturing Company, shown witness). Who is the R. Mason who wrote that letter?

A. It is Colonel Mason, a lawyer in Washington. I think he has another man in company with him there. It is R. Mason; that is the man we always done our business with.

Q. When did you first employ R. Mason as your attorney?

A. I could not say exactly; I should say probably a year before he wrote this letter. I should presume about that time.

Q. When did you first employ him or ask his opinion in reference to a patent for folding beds?

A. At the time this Stark patent came out, when we found out about Stark, when we was infringing upon his patent, then we counseled with Col. Mason on the subject.

Q. How did you first find out you were infringing on Stark's patent, as you say?

A. Stark said we was.

Q. When?

A. In the early part of February.

Q. In what year?

A. 1874—no, 1877.

Q. Where did he say this?

A. In our store.

Q. Where in your store did he say this?

A. 1878 is the time that we had the interview with Colonel Mason; I was mistaken.

Q. I am speaking of the first time you ever saw Stark?

A. In the early part of February, 1878.

255 Q. Where was it?

A. In our store.

Q. Do you mean to say that that was the first you ever knew of the Stark patent?

A. I never saw him before in my life.

Q. I did not ask you that; I asked you if you meant to say that that was the first time you ever knew of the Stark patent?

A. I knew it in the first part of February, from what Warren

Hale told me. He said a man by the name of Stark, from the West, had been in and said we had been infringing on his patent, and that he did not stop but a very short time. I asked him, says I, "Where is Mr. Stark stopping?" Says he, "I don't know." Says he, "Mr. Everitt has just gone away; I told Mr. Everitt about it." Says I, "What did he say?" Says he, "He said he knew all about it." That is the first I ever knew of Stark's patent.

Q. Do you not remember that you visited a person at Mr. Everitt's request before you signed that agreement with Mr. Everitt, to see about Stark's patent in Philadelphia?

A. No, sir.

Q. You did not?

A. I did not.

Q. You have no recollection of it?

A. I have no recollection of it, and never did.

Q. And you never heard of Stark's patent before February, 1878?

A. I never did; about that time; some time in February.

Q. How did Mr. Stark happen to go to your office about it?

A. He told me he saw it in Peterson's Magazine—saw our advertisement, which was the first he ever heard about our folding bedstead we advertised in Peterson's Magazine; no! I don't mean Peterson's; I mean Lippincott's.

Q. Was Mr. Stark invited to come to your office by any one?

A. No, sir; not to my knowledge.

Q. After you had this conversation with Mr. Stark what did you do in reference to his patent?

A. Well, he began to look into it—to see the value of it.

Q. What did you do in the way of looking into it?

A. We counseled with Col. Mason, of Washington.

Q. Did you go to Washington for that purpose?

A. Yes, sir; and tried to have Mr. Everitt go with me, but he wouldn't go; he said it was good for nothing; he wanted to have nothing to do with it.

Q. Did you employ a man named Stevens?

A. There was a man worked for us by the name of Stevens.

Q. What was his full name?

A. I think A. B.

Q. Was it Asher B. Stevens?

A. That is it; yes, sir.

Q. Did you employ him to experiment or invent with respect to wardrobe beds?

A. No, sir.

Q. Did you ask Mr. Stevens to get up something which would relieve your company from paying Mr. Everitt his royalty on the patented bed?

A. No, sir; we never asked him; but he said he could. We never asked him, but he went to trying experiments at his own expense.

Q. Was he in full consultation with you during the time he was making those experiments?

A. He was there in our factory.

Q. Employed by you?

A. No; we did not pay him; he did it at his own expense.
Q. But he did it in your factory?
A. He did it in our factory.
Q. And you mean to say that you did not pay him?
A. We did not employ him; he did it at his own expense.
Q. Did not you employ him and pay him for his time?
A. Not on beds.
Q. What did you employ him for?
A. He worked on chariot chairs.
256 Q. How did you employ him—by the week?
A. Sometimes he worked by the week and sometimes he worked by the piece.
Q. How did you employ him during the time he worked on wardrobe beds?
A. We did not employ him at all.
Q. He was not, then, in your employ?
A. He was in our factory, but we did not pay him for his services.
Q. Who furnished him the lumber for making his models?
A. Well, he got that in the shop and around; it was of very little consequence.
Q. Did he go to Washington to see whether what he had done would succeed?
A. He went to Washington; whether he went on that business is more than I know.
Q. Did not you go with him?
A. I think I went once with him, but then, I think, it was six or eight months, and might be a year, before these bedstead arrangements coming around.
Q. Did you go with him to visit Col. Mason to see whether what he had done would answer your purpose?
A. I have no recollection of any such thing, for I did not think his experiments amounted to anything; I did not consider them good for anything.
Q. Did not you instruct him to go and show what he had done to Col. Mason?
A. No, sir.

(Mr. Otterson objects that this is not cross-examination in any sense of the word.)

Q. Do you not remember an interview between Mr. Stevens, Mr. Warren Hale, and yourself, when a plan that Stevens had prepared for manufacturing these beds was submitted, and was approved by you?
A. No, sir; he never got up a wardrobe bed that was ever good for anything, to my knowledge.
Q. Did not you take assignments of the improvements that he made, and do you not claim to own them now?
A. He sold us out his chair—this chariot chair,
Q. I am not speaking of chairs, but beds?
A. I desire to explain it. He sold us out his chair, and he said he would include all those things and put them in.

Q. Then you do claim to own them now?

A. Of course; they are of no consequence, and never considered so.

Q. Do you claim to own them now?

A. Yes, sir; he put them in himself, and wanted to do so.

Q. Did not you have papers drawn for Mr. Stevens to sign, assigning these improvements to you, by Mr. Howson?

A. Not to my recollection; I have no recollection of it.

Q. Do you not remember that such papers were drawn up by Howson by your direction, and that Stevens refused to sign them?

A. I have no recollection of any such thing; there was papers drawn in the chair business by Mr. Howson, but I have no recollection of any bedstead.

Q. Did not you agree with Mr. Stevens that if he succeeded in making such improvements as would enable you to do without Everitt's patent you would give him 3 per cent. royalty?

A. Perhaps so; I do not recollect now; I do not recollect about it.

Q. Was it not part of your agreement with Stevens that you should buy the Stark patent?

A. No, sir.

Q. And the Maine patents?

A. No, sir.

Q. You are positive of that?

A. I know it is so.

Q. Do you mean to say that your arrangement with Mr. Stevens about the Stark patent did not precede Stark's coming from Kansas?

A. I do not understand you.

257 Q. Do you mean to say you had no arrangement with Stark about his patent before he came from Kansas?

A. No, sir; we never had any arrangement; never knew of it.

Q. What paper did Mr. Stark give you when you first bought his patent?

A. He gave me a sort of memorandum of agreement, stating that he had sold it, and that he had received $200 and a due bill amounting to $800; but it was not a regular assignment; it was just a memorandum. We agreed we would let Col. Mason draw the papers.

Q. Did Mr. Henry S. Hale know anything about the existence of that paper?

A. No, sir; I do not think he did. Mr. Henry S. Hale drew the due bill, and was called out. I do not know that he left the city, but he was called out, and left the due bill, and I paid Stark $200.

Q. Where is that paper?

A. When Col. Mason drew the assignment, after it was drawn he passed it over to Mr. Stark, and Mr. Stark put it in the stove.

Q. Where was that?

A. That was in Col. Mason's office, in Washington.

Q. When was that paper drawn and signed by Stark?

A. About along past the middle of February or the latter part of February, 1878.

Q. Did you give directions not to record the assignment from Stark to the company?

A. I said nothing about it; it was left with Col. Mason; it was entirely in his hands.

Q. Did you not understand that the paper was not to be recorded until the suit was to be commenced against you?

A. The matter was left with Col. Mason; he managed it just to suit himself.

Q. Do you mean to say you had no knowledge of it?

A. It was talked over there, but he was a lawyer, and I supposed knew best what to do. The assignment was signed and he took care of it.

Q. Was not the reason why that paper was left off the record to keep Everitt in ignorance of it?

A. I knew nothing about it; that was Col. Mason's affair.

Q. Was not that your purpose?

A. I am not a lawyer, and know nothing of it; that was left to Col. Mason.

Q. Was it not understood between you and Col. Mason that a suit was to be commenced by Stark against you?

A. He may have said that that was the best way, but whatever he said we done; we done just as he told us; it was left entirely in his hands.

Q. Do I understand you to say that you knew the purpose of keeping that paper off the record was that M. Everitt might be deceived by it?

A. I did not know anything about that. I had nothing to do with it. The papers were signed and Col. Mason put them away, and there was nothing more said about it; they were left in his hands.

Q. Did not you know that it was the intention that the papers should not be recorded?

A. I did not know. Mr. Mason took them and said it was all right, and Stark and I left the office. We were there over an hour.

Q. Did you not know at the time that it was the purpose of Mr. Mason not to put that paper on record?

A. That was left in Col. Mason's hands to do just as he was a mind to. I did not know anything about it. I did not know whether they should be put on record or not. I trusted to Col. Mason, being a lawyer, and employed him as such.

Q. Did you not know that that letter, this Exhibit No. 40 (exhibit shown witness), was written for the purpose of being shown to Mr. Everitt, that he might be misled by it?

A. I did not know anything about it; no, sir; I did know any such thing. Mr. Everitt saw that letter the very morning it came in.

Q. Was it not written for the purpose of showing it to him, and for no other purpose?

A. Not to my knowledge; no, sir.

258 Q. Were you deceived by it?

A. No.

Q. Did you know at the time that letter came that it was all nonsense that Mr. Stark should bring a suit against you for violating that patent?

A. We had not bought Stark's patent at the time; we were talking about it. That was on the 10th.

Q. I thought you said a little while ago that you had bought the Stark patent about the middle of February, and given him two hundred dollars on account, and a due bill for $800.

A. That was past the middle of February.

Q. When was it?

A. I think on the 18th or 20th, along there.

Q. Did you remember when you got this letter?

A. The day we showed it to Mr. Everitt.

Q. What day was that?

A. I could not say the day. This (the letter) is dated on the 10th.

Q. Look at the date (letter shown witness) and see if that will refresh your recollection a little?

A. It is dated on the 10th; I suppose it would be written on the 9th.

Q. The 10th of what month?

A. The 10th of April; no, the 10th of February.

Q. Is that letter dated the 10th of February?

A. Yes, sir.

Q. Look at it again.

A. (Referring to the letter). The 10th of April; it says the 10th of April.

Q. Please explain the inconsistencies in your answers.

A. (Referring to the letter). That is the 10th of April Yes, sir; that is the 10th of April; I was thinking of another letter.

Q. Did this letter deceive you when you got it?

A. No, sir.

Q. Did you know that it was impossible for Mr. Stark to bring suit against you for violating his patent at that time?

A. I did not know anything about it; we left that with Col. Mason.

Q. Did you expect Col. Mason to bring suit against you as the attorney of Andrew Stark for violating that patent?

A. Col. Mason told us what he could do, and we left that matter in his hands. I had no more to do with it than any other man.

Q. What did he tell you that he could do?

A. I could not tell you that; I could not recollect.

Q. What did you understand Col. Mason to mean when he said he trusted "you will not continue the infringement of Stark's patent," in this letter?

A. Well, I supposed he was going to commence suit.

Q. How could he sue you for infringing a patent you owned?

A. I do not know anything about it. I am not a lawyer. We went just according to the advice of Col. Mason.

Q. What did you understand Col. Mason to mean when he said in this letter that if you desired to continue the manufacture of these bedsteads he would be prepared to negotiate for terms of license?

A. He was trying to see if he could not get Mr. Everitt around. He was trying to get him around for some time.

Q. Had you not bought it long before this letter was written?

A. Yes, sir.

Q. How, then, could you get a license for a patent that belonged to you?

A. That I do not know.

Q. What I want to know is, was not this letter written upon an agreement between you and Mr. Mason merely for the purpose of showing it to Mr. Everitt to influence his mind?

A. Not to my knowledge.

259 Q. Then if that was done, it was done without your knowledge?

A. Yes, sir.

Q. The wickedness was all Col. Mason's and not yours?

A. It was not mine.

Q. When did you first speak to Mr. Everitt about Stark's patent. I mean you, yourself?

A. In the early part of February, 1878, as soon as Stark came. In fact, Mr. Everitt knew of it before I did; he knew Mr. Stark had been in before I did.

Q. When did you speak to him about it—you, yourself?

A. Right off; the next day, I presume, because Mr. Everitt would be in our store most every day or two.

Q. Did not you tell Mr. Everitt, at some time of the interviews, that Stark wanted $30,000 for his patent?

A. No, sir; never! I told him no such thing.

Q. Did you ever tell Mr. Everitt that you had bought Stark's patent?

A. I do not know as I did; I told him we had got to buy it, and tried to have him buy it with us; but he said he would not buy it; that it was good for nothing and he wouldn't give a dollar for it.

Q. Did not you tell him that it would cost $30,000?

A. No, sir; never!

Q. Why, did not you tell Mr. Everitt that you had bought it, at the time you had bought it?

A. We done our best from the first part of February to the middle of February to get him to do something; he said he would not; he said he knew all about it long before we had bought his patent; that it was good for nothing.

Q. Then why did you conceal from Mr. Everitt the fact that you had bought it?

A. That was a matter that was left in Col. Mason's hands.

Q. Do you mean to say that you concealed this fact from Mr. Everitt by the advice of Col. Mason?

A. Yes, sir.

Q. And that alone? You had no knowledge of the purpose of it?

A. None whatever.

Q. Were you not, all the time you were concealing this fact from the knowledge of Mr. Everitt, endeavoring to negotiate with him to reduce his royalty?

A. We presumed he did not know anything about it.

Q. But were you not, at that time, trying to get him to reduce his royalty?

A. We did all we could from the fore part of February to past the middle of February to make some trade with Mr. Everitt to get him to buy with us, or do something; but he would not do anything whatever.

Q. Did not you continue to make efforts to settle with Mr. Everitt long after the middle of February?

A. Yes, sir.

Q. Do you remember a meeting which took place in the office of Mr. Everitt's counsel, on Walnut street, where Col. Mason was present representing himself as Stark's lawyer?

A. Yes, sir.

Q. Do you remember the question being asked you whether you had not become the owner of Mr. Stark's patent and how it was indignantly denied?

A. No, sir; Mr. Mason said there was no such thing on record.

Mr. OTTERSON (to Mr. Mitchell): I did not know anything about it, and if you want that on the record I have no objection.

The WITNESS: Judge Otterson did not know anything about that at that time.

By Mr. MITCHELL:

Q. Did you not, at that meeting and at other meetings, offer Mr. Everitt to divide the royalty he was then receiving equally between him and Stark?

A. I do not recollect; there was a great deal said, but I do not know whether that was or not.

260 Q. Did not you tell Mr. Everitt, from time to time, that you would have to pay Stark so much; that you could not afford to pay him what you had been paying?

A. I do not recollect; there was so much said that I do not recollect. I told him we had got to buy the Maine patents.

Q. I am not speaking of the Maine patents; I am speaking of Stark's patent. Did not you tell him you would have to divide the royalty between Stark and himself?

A. I do not know.

Q. Did you know that your attorney in Washington, Col. R. Mason, was going to commence suit against you in the circuit court of the United States before it was commenced?

A. He once told me he would have to commence suit; I do not know how, or when, or in what shape.

Q. Did not you authorize Mr. Mason to commence suit in the name of Stark against you to stop the manufacture of beds under Everitt's patent?

A. I think it was Mr. Stark that done that.

Q. What right had Mr. Stark to commence suit against you months after he had assigned his patent to you?

A. I do not know.

Q. Do you mean to say that that was a genuine suit commenced by Stark against you?

A. I do not know; I would not say it was Stark. The thing was left in Col. Mason's hands to do just as he pleased; we had nothing to say about it at all; we employed him to manage it.

Q. Did not you tell Mr. Everitt that Stark had commenced suit against you and he must defend it?

A. Perhaps so; I have no recollection, though.

Mr. MITCHELL: I offer in evidence the following letter:

"No 16 NORTH 7TH STREET,
"PHILADELPHIA, 7, 10, 1878.

"E. C. Mitchell, Esq., counsel, etc.

"MY DEAR SIR: The enclosed was brought to me this morning by the defendants therein mentioned, and I send it to you for examination and for the examination of Mr. Everitt, your client, when you will please return it to me, and I want whatever information and assistance he may have at command to resist the attack.

"You will please let me hear from you, and oblige,

"Very respectfully,

"JAMES OTTERSON."

This letter enclosed a copy of the bill of Stark against the Hale-Kilburn Manufacturing Company, in the circuit court of the United States, which is already in evidence as Exhibit No. 38.

(The letter marked "No. 60, Nov. 6th, 1879, R. A. W.")

Q. Did you not bring the bill inclosed in this letter to Mr. Otterson?

A. I think Mr. H. S. Hale did.

Q. Did you have knowledge of his doing so?

A. Yes, sir.

Q. What did you do that for?

A. That is according to the directions of Col. Mason.

Q. Did you tell Mr. Otterson that the suit was a sham?

A. No, sir.

Q. Why did not you tell your counsel here that the suit was an imaginary suit, devised by Col. Mason, and that you yourselves were the owners of the patent and both plaintiff and defendant in the suit?

A. I do not know why we did not; but Col. Mason told us how to do.

Q. Did he tell you not to tell Mr. Otterson?

A. Yes, sir.

Q. Did you not in 1874, before or about the time you made the agreement with Mr. Everitt, visit Mr. Austin, on 8th street above Race, to see beds manufactured under Stark's patent?

A; I think I went in there once to look at his bed, but never knew anything about Stark.

Q. Did not you know that H. S. Hoover had license from Stark to make these beds?

A. No, sir; never knew it until we bought the patent.

261 Q. Did not you know, in 1874 or 1875, that Hoover had it first at 230 South Second street?

A. No, sir; I never knew that he had an assignment until Mr. Stark showed it himself, when he sold the patent. I recollect Mr. Austin having a bed, but whose bed it was, or whose patent he was working under, I do not recollect now.

Q. Was that before you made the agreement with Mr. Everitt?

A. I could not say now. I do not recollect anything about it.

Q. Did you not have conversations with Mr. Everitt about the manufacture of these beds in 1875 or 1876?

A. Not to my recollection.

Q. Did not Mr. Hoover come to you and say he was going to manufacture those beds under Stark's patent, and you said you would shut him up if you could?

A. I have no recollection of such a conversation whetever.

Q. You know, Mr. Hoover, do you not?

A. I know Mr. Hoover; yes, sir. But I never made such threats as shutting him up. I know that.

Adjourned until Monday next, Nov. 10, 1879, at 3 p. m.

PHILADELPHIA, *Nov.* 10, 1879.

The meeting arranged for to-day was not held on account of the absence of Mr. Bowman, but was continued until Monday next, Nov. 17th, 1879.

PHILADELPHIA, MONDAY, *Nov.* 17*th*, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Henry S. Hale, Mr. Cheney Kilburn.

Cross-examination of CHENEY KILBURN resumed by Mr. BOWMAN:

Q. Who went to Washington with you, when you took the assignment of the Stark patent?

A. Mr. Stark.

Q. Did any one of the company go besides yourself?

A. No, sir.

Q. Did any member of the company go at any other time?

A. Not to my recollection.

Q. Did Mr. J. Warren Hale ever go?

A. Not to my recollection.

Q. Did you ever go with Mr. Stevens?

A. I think that I went once with Mr. Stevens. I am not quite certain; I think I did.

By Mr. OTTERSON:

Q. In connection with this purchase?

A. It was not in connection with this.

Mr. OTTERSON: I understand the inquiry to be in connection with this purchase (to Mr. Bowman), is it not so?

Mr. BOWMAN: Yes, sir; the purchase and assignment.

The WITNESS: I do not recollect. I think I went once with him,

whether it was this time that Stark and I went, or whether it was some other time, I could not say.

Q. Did you send Mr. Stevens to Washington with reference to the Stark patent?

A. No, sir; at least I have no recollection of sending him there.

Q. Did either member of your firm send him?

A. Not to my knowledge.

Q. Do you know that he went to Washington to see about the Stark patent?

A. I have no recollection.

Q. Do not you know that he saw Mr. Mason about it in Washington?

A. I have no recollection of it.

Q. Do you know whether or not he ever spoke to Mr. Mason about it?

A. Not to my knowledge.

Q. Do not you remember an interview that he had with Mr. Mason in your store, on Sixth street near Arch, with Mr. Stark in reference to it?

A. No, sir; I have no recollection of his having any interview with Mr. Stark or Mr. Mason.

262 Q. Did you or any of your firm or company ever correspond with Mr. Stark with reference to his patent?

A. No, sir.

Q. Did you never write to him at Topeka?

A. No, sir; not to my knowledge.

Q. When did you purchase this Stark patent from him?

A. In 1878.

Q. Do you remember when; in what time?

A. In the latter part of February, 1878.

Q. Who purchased it?

A. I purchased it; I did the most of the negotiation.

Q. Were the other members of the firm aware of it?

A. Yes, sir; yes, sir.

Q. Were they also aware of the assignment by Stark to the company?

A. No, sir; I do not think they knew anything about it. Mr. H. S. Hale was in the office. It was in the afternoon that I closed the trade with him, and Mr. H. S. Hale was there, and he drew a due bill, I think, for $800, and I think I gave Mr. Stark $200 in money.

Q. I want to know whether the members of the company knew of the assignment?

A. No, sir; they did not know anything about it; but I give him that money, and he gave me a sort of memorandum that he had received $200, and he agreed that he was to go to Washington to see Colonel Mason to draw the assignment. At that time we intended to go right off in a day or two, but we delayed it a number of days.

Q. But, finally, you and Stark went to Washington and had the assignment papers prepared and executed?

A. Yes, sir.

Q. Then when you returned I suppose you told the members of the company what had been accomplished?

A. No doubt I did; yes, sir.

Q. Do you remember now to whom you told it?

A. I do not recollect.

Q. But you have no doubt of having communicated it to the company?

A. I have not.

Q. Did Mr. Mason return with you from that trip with Stark?

A. No, sir.

Q. Do you remember swearing to this answer (answer shown witness), filed by Mr. Otterson, your attorney?

A. I do not recollect the time.

Q. The 16th of November, 1878.

A. Yes, sir; I recollect it.

Q. Do you remember swearing in that answer "at that time the company did not own the assignment or patent of Stark?"

A. It was not in our possession; I never saw the assignment.

Q. When did you say you went to Washington with Stark; about the last of February, 1878?

A. Oh, no; it was later than that.

Q. Later than February?

A. Later than February.

Q. When was it?

A. It was quite a number of days. I do not recollect just when, but it was quite a number of days; a little while afterward.

Q. Was it in the month of February?

A. I do not think it was.

Q. Was it in the month of March?

A. I could not say. It was quite a number of days after that.

Q. After that?

A. I do not know as I understand the question.

Q. My question is, When did you go to Washington with Mr. Stark, and have him execute the assignment of the Stark patent?

A. Well, now, my impression is that it was some two weeks after Mr. Stark and I had closed the trade; that is my impression; it might have been longer than that; I would not say.

263 Q. Did you pay him for the patent before or after the assignment?

A. I paid him for it before we went to Washington. He gave me a memorandum.

Q. That you have stated; he gave you a memorandum, and you paid him some cash before he went to Washington?

A. Yes, sir; and we gave him our due bill.

Q. And when he came back from Washington you cashed his due bill?

A. Yes, sir; as he wanted it. I do not think it was all paid up until May, some time.

Q. Now, I want to know how you reconcile your statement of to-day with your oath, when you swore to the truthfulness of this

answer. In the answer you say that "the Stark patent has not been assigned to them;" that is, to the company defendant?

A. The assignment of Mr. Stark, which he gave me—at least the agreement, or "memorandum of agreement," as we call it—was burned up in Col. Mason's office. I never saw the assignment that Col. Mason drew, although it was drawn while I was there in the office, and Mr. Stark signed it. Mr. Mason took it, and put it in the place he has for keeping his papers, and I never saw it. I expected him to keep and take charge of it; and Mr. Stark took his agreement, as I told you, and threw it in the stove.

Q. That was the memorandum?

A. The memorandum; yes, sir.

Q. And Mr. Mason prepared the assignment and got Stark to sign it?

A. Yes, sir; I suppose so.

Q. And you never saw it?

A. I never saw it; I never took it in my hand.

Q. But you knew it was fixing the title to his patent in your company, did you not?

A. I expected it was.

Q. You had paid your money for that purpose?

A. Certainly.

264 Q. Then the trouble is that the patent had been assigned to your company months before this suit was brought?

A. Oh, yes.

Q. Why did your company deny that fact when this answer was filed?

A. Well, I have no recollection of there being any such thing.

Q. I ask why did your company deny that assignment when this answer was sworn to by them? Have you any explanation of that?

A. I have no recollection of its being there; I had no recollection that there was any such thing in there at all.

Q. Why, you would not swear to anything without knowing what you were swearing to, would you?

A. No, sir; not if I knew it I would not.

Q. That is what I supposed. Then you knew what you were swearing to when you swore to this answer, did you not?

A. Oh, of course. It was read over, and I, of course, signed it. I supposed it was all right.

Q. You can read also, can you not?

A. Yes, sir.

Q. You did not know, when this was signed and sworn to, that Mr. Everitt was aware of how the Stark patent was secured, and how the assignment was obtained?

A. How is that signed? (Referring to the answer.)

Q. It is signed by every member of the firm: C. Kilburn, president; Warren Hale, Artemus Kilburn, Henry S. Hale, J. Warren Hale. At that time you were not aware how Mr. Everitt knew you had purchased the Stark patent, and how the assignment was arranged between you?

A. I knew nothing about M. Everitt's knowledge.

Q. Was it not the object of your company to conceal that from Mr. Everitt?

A. Mr. Everitt—we tried all the time, from the early part of February clean up to the latter part of February, to have him buy.

Q. Yes, sir; you did state that; but now I want an answer to the question, was not the object of your company to conceal the fact of your assignment and purchase of the Stark patent?

A. I do not think we would be under any obligations to tell Mr. Everitt all of our business after we had tried for three weeks to get him to buy with us, and after we had given him up.

Q. Then you concluded that you had a perfect right to buy this patent—the Stark patent?

A. Of course so. We had to buy it or else stop our business, and Col. Mason said he would keep that matter in his hands, and it would be perfectly right for Mr. Everitt to help pay for it; that we should not pay him a royalty, and he would keep the documents in his possession, look the matter over, and do whatever he thought best in the matter. We had either got to buy the Stark patent or else stop the business of making beds.

Q. And you considered that you had a perfect right to buy it, and it was a fair and honest business transaction?

A. I did, after we had tried for two or three weeks. I did not consider that we were under any obligations after I had tried and he would not do anything, and he would not have anything to do with it; he told me so a good many times.

Q. If you considered it a fair, honest business transaction, why did you go to so much trouble and expense to conceal it from Mr. Everitt, and, after you had the title in your own name, employ counsel to bring suit against yourselves, and while that suit was pending endeavor to get Mr. Everitt to agree that 5 per cent. of his royalty should go to Stark, as you represented, while, in point of fact, you then owned his very patent?

(Objected to by Mr. Otterson because the question is based upon a misstatement of fact, and Mr. Otterson asks Mr. Bowman to put his questions separately, so that the witness may be able to answer intelligently.)

Mr. BOWMAN (to witness.): Cannot you answer that as it is?

A. That matter was left entirely in Col. Mason's hands.
265 We had nothing to say about it. Col. Mason was going to manage it to suit himself.

Q. After you had purchased the Stark patent and had the assignment of it, why did you want Mr. Everitt to agree that 5 per cent. of his royalty should go to Stark?

A. We could not get him to say anything about it.

Q. But my question is: Why did you want him to agree to it?

A. We wanted him to do something. We wanted him to make some kind of an offer. We wanted some kind of an offer. We did not think it belonged to us to have to buy the Stark patent and then pay him a royalty.

Q. But my question is: After you had bought this Stark patent

and had the assignment of it, then it was your own, and Stark had nothing to do with —. Now, why did you then want Mr. Everitt to agree that Stark should have 5 per cent. of the royalty, which you agreed to pay him, Mr. Everitt?

A. That was Mason's idea; Mason's; that was his.

Q. Well, the 5 per cent. which you were to get out of Mr. Everitt on his royalty, under his agreement with your company, was that to go to Mr. Mason?

A. No, sir; it was just a price. Mr. Mason just proposed to him 5 per cent. Mr. Everitt would not say anything. He would not say he would give one cent. He would say nothing, only that it was not good for anything.

Q. To whom was that 5 per cent. to be paid? It would have been put into the pockets of the company, would it not?

A. We had an allowance for that. It would have gone into the company, of course, if there had been any such sum paid.

Q. And Mr. Everitt would not agree to it; is that so?

A. He would not do anything.

Q. You say that he would not do anything?

A. Yes, sir.

Q. Was he not always willing to stand upon his agreement with your company?

A. Yes, sir; but when we found out that there was other patents he would not do anything. There was the Maine patent came out.

266 Q. When you say that he would not agree to anything, you mean that he would not agree with you to this arrangement to divide his claim for royalty under his agreement?

A. No, sir; and he would not pay anything either. We became satisfied, by two or three counsel, that we had to buy it or stop our business, because Everitt's patent did not amount to anything.

Q. Mr. Mason was your only counsel in the matter was he not?

A. No, sir.

Q. How many improvements have been made upon the Everitt patent?

A. They are all in evidence—I suppose they are all in.

Q. In your examination the other day you spoke of Stevens working on the Everitt patent and trying to make some improvements; where are the models that he got up?

A. He was a trying to get up a bed—Stevens was—at his own expense; to get up a model. I do not know as it had anything to do with Mr. Everitt's patent. He always said he could get up one that would not infringe on anybody's patent. I do not know where they are. I supposed they had been brought here. If they were not, we have them—well, I do not know that we have Stevens', he got up a good many; quite a good number of things, and he would show them, and it appears that there were one or two, when he left—run away, as you might say—left at his boarding-house.

Q. Where was that?

A. On Spruce street, somewhere.; I do not know; I suppose in the neighborhood of Sixth or Seventh street; along there.

Q. Did not Mr. S. M. Hale go there and get these models?

A. Yes, sir.

Q. Where are they now?

A. I could not say; I presume they are at the store; I do not know.

Q. What was the object of this undertaking of Stevens?

A. Well he was a man that was always trying to get up some new things. He was always trying to invent something; some new idea. I suppose his object was to make money at it.

Q. Was not the object well understood between your company and Stevens, and was it not for the purpose of devising means by which to avoid the payment of Everitt's royalty?

A. I do not know what Stevens' idea was.

Q. No; but was it not the understanding between your company and this man?

A. No; he wanted to get up something. He said he could get up a bed and he would sell it to us cheap. I told him we was always open to anything we got cheaper.

Q. You had papers prepared also, had you not, to secure whatever virtue there might be in Stevens' models?

A. I think we did.

Q. Who prepared those papers?

A. I think Mr. Howson did.

Q. Were they ever executed?

A. No, sir; he ran away. He was to execute them on Monday, I think, but he left.

Q. Have you got those papers?

A. I presume they are at the store or at Mr. Howson's. I guess they are at Mr. Howson's. I am not sure about that.

Mr. BOWMAN: I call, now, for the production of the models and papers referred to by this witness, including the drawings connected with the Stevens model. In answer to Mr. Otterson you spoke of the discount allowed upon the Everitt bedstead; I want to ask you whether you had not different styles and finish of beds?

A. Yes, sir.

Q. And the style and finish made a great difference in the price, did it not?

A. In settling with Mr. Everitt we allowed him royalty on the extra price received for all the extra finish beds. I think we did, the latter part of the time. Mr. Hale had the matter in charge.

Q. But the fore part of the time you did not?

A. I think we did upon all the higher priced styles of beds; but I am not quite certain about it.

267 Q. Then I understand you to say that you manufactured beds of different finish?

A. Yes, sir.

Q. And those beds you would send out to your various branch stores, would you not?

A. Oh, yes, sir; going to our other stores and our customers. The finish, when it was in gold or guilt, or something of that kind, was

what we call extra finish—not plain without walnut finish—when we might finish a bed in a day, going over it very hurriedly. But in that plain walnut finish we never made any account of it, even if we spent $100 on it; but it was in the gold and ebony finish where we deducted that from the beds, the same as we did with the springs. Mr. Everitt was always satisfied. He did not expect us to pay for the extra finish or springs, or anything of that kind. At least he never found any fault, and was always perfectly satisfied up to the time we stopped paying him. He always seemed satisfied with everything, and in fact told us he did not believe he could have got anybody in Philadelphia that would have done so well—sold so many beds and settled so well. That was up to six weeks of the time we bought Stark's patent; and he was perfectly satisfied with everything, and said he did not think he could have got another house in Philadelphia that would have done half so well as we did.

Q. Do I understand you to say, now, that you deducted from Mr. Everitt the extra finish?

A. Yes, sir; the best finish we did. We would take it off the bed. If the bed was worth $100, and there was $25.00 of extra guilt put on it, we would take off that $25.00 in settling with Mr. Everitt.

Q. What about the all-ebony finish bedsteads?

A. I do not remember anything in particular about that. I think it was ebony and gold, though, where we made the reduction. I think that was the only place.

Q. Did you also deduct for looking-glass fronts?

A. Yes, sir; looking-glass plates.

Q. Were they not all a part of the bed?

A. No, sir. We put the frame in, into the front part of the bed, and put a panel in—a mere panel; and while a great many of them were so sold, if anybody wanted a French plate put in we would take that panel out and put the plate right in. Some would have one way and some the other—mostly the panel. We could make the bed so that it was always right and ready for the change. We did not consider the looking-glass—the French plate we put in it—had anything to do with the bed any more than to put a feather bed on the bed or pillows.

Q. You had these beds with all these extra finishes in your store, in your stock, and in your branch stores at all times, had you not?

A. No, not always. They never sold very rapid.

Q. But you always tried to have them on hand, in the stock?

A. Always tried to,

Q. You did not sell, for instance, in your New York store a plain bed, and then send it over to Philadelphia to have these extra finishes put on it, did you?

A. No, sir; not often. Occasionally that was done.

Q. You manufactured the plain and extra-finish ones as a part of the stock in trade to send to your different stores?

A. Oh, yes, sir.

Q. Did you always deduct, in your settlements with Mr. Everitt, the springs?

A. We did not in the fore part of the time when we first commenced. It was overlooked by Mr. Hale, and we paid Mr. Everitt royalty on the springs for some time. Then Mr. Hale found it out, and we talked with Mr. Everitt, and told him it would have to be deducted, and he would be charged with the springs; and he seemed perfectly satisfied.

Q. Do you say that Mr. Everitt agreed that that should be taken off?

A. He never complained at all.

268 Q. My question is, did Mr. Everitt agree that you should deduct the cost of the springs?

A. Yes, sir; of course he did; he was always perfectly satisfied.

Q. I did not ask what he was satisfied with. I want to know whether you swear that Mr. Everitt agreed that your firm should deduct from him the cost of the springs?

A. I had always understood so from Mr. Hale. I do not know that I ever talked about the matter with Mr. Everitt.

Q. You see that is very different from swearing that he did agree to it. Then you did not mean to swear that Mr. Everitt did agree that you should take off the cost of those springs?

A. I am quite sure that I talked to Mr. Everitt about those springs.

Q. Do you mean to say that Mr. Everitt agreed that you should deduct the value of those springs from him in his settlements?

A. I am very sure he did say so; very sure.

Q. The springs were part of the bed, were they not?

A. The springs were made for folding beds, or any other beds we was a mind to put them onto. They will go as well on one bed as on another.

Q. Were they not a part of the Everitt bed?

A. No, sir; I did not consider them so. A good many would buy it without them.

Q. You did not consider them so—was it not your rule never to sell a bed without springs?

A. No, sir; we sell a great many without springs. There is no particular rule about it. We sell them with the springs or without.

Q. Did not you advertise to the public that the springs were a part of the bed, and that you never sold a bed without the springs?

(Objected to by Mr. Otterson because if so the advertisement will speak for itself.)

A. I do not recollect anything about that.

Q. (Advertisement shown witness.) I call your attention to this advertisement, and particularly to this language, "None are sold without springs—special notice to the public."

A. I did not know there was any such thing in print.

Q. Who attends to the advertising of your establishment?

A. Mr. Hale attended to it mostly, he and Mr. Roberts.

Adjourned until Monday next, November 24th, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *November 24th*, 1879.

Parties met at the office of the master.

Present: The master, Mr. Otterson, Mr. H. S. Hale, Mr. Cheney Kilburn, Mr. Everitt.

On account of the absence of Mr. Bowman, adjourned until Wednesday, December 3d, 1879.

PHILADELPHIA, WEDNESDAY, *December* 3, 1879.

Parties met at office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, Mr. Cheney Kilburn.

Cross-examination of Mr. CHENEY KILBURN resumed by Mr. BOWMAN:

Q. At the last meeting I called for the Steven's models and papers which were drawn up between your firm and himself with reference to those models—are they here?

A. They are here; yes, sir.

(Three models, together with drawings and specifications, produced by witness: The three models offered in evidence by Mr. Bowman and marked, respectively, "No. 60, Dec. 3d, 1879, R. A. W." "No. 61, Dec. 3d, 1879, R. A. W." "No. 62, Dec. 3d, 1879, R. A. W." The drawings and specifications also offered in evidence by Mr. Bowman and marked "No. 63, Dec. 3, 1879, R. A. W.")

269 Q Did you or your firm execute an agreement with Mr. Stevens in relation to the models which you have produced?

A. There was an agreement; yes, sir. I am sure there is an agreement.

Q. Was it signed?

A. Now, I do not know. I cannot answer that question. Mr. Harry Hale made all that arrangement, made the trade, and I think it was in Boston where it was done, but I cannot say anything about it.

Q. You saw the agreement, did you not?

A. I do not think I ever saw it; I have no recollection of ever seeing it.

Q. Do you know where it was signed?

A. I do not know. I supposed it was signed in Boston.

Q. Is that paper now in the possession of your firm?

A. I expect so, I do not know.

(Mr. Otterson interrupts, saying that he does so in order to save time, and asks Mr. Henry S. Hale if he has papers such as those spoken of by Mr. Bowman. Mr. Hale says that he has. Mr. Bowman calls for the production of those papers, and they are produced as follows: Paper dated Boston, Massachusetts, July 28, 1878, signed Asher B. Stevens, and recorded [in] Liber "C," 23,480, Washington; the paper offered in evidence by Mr. Bowman and marked "No. 64, Dec. 3, 1879, R. A. W.")

(Another paper of the same date in Boston, recorded [in] Liber "H," 23101, Washington; also a receipt of the same date in full for fifty

volumes of Patent Office Reports; also a copy of due bill of same date, for $85, given to Stevens; also, release dated Aug. 10, 1878, recorded [in] Liber "H" 23102, Washington, which paper is offered in evidence by Mr. Bowman, and marked "No. 65, Dec. 3, 1879, R. A. W.")

Mr. BOWMAN: In addition to the call already made, I also call for the agreement made between the defendants and Asher B. Stevens, dated the 16th day of March, 1878.

(The agreement produced by Mr. H. S. Hale.)

Mr. BOWMAN: I also call for the production of the agreement made between Henry S. Hale and Asher B. Stevens on the 10th day of February, 1876.

(The agreement produced by Mr. H. S. Hale.)

By Mr. BOWMAN:

Q. In your account with Mr. Everitt I noticed that you have deducted from him the sum of one hundred dollars in connection with a stand at the Centennial Exposition. Will you state why that was deducted?

A. Because it was agreed upon. That was what was agreed between Mr. Everitt and us, whatever it is; I do not think it is $100.

Q. Do you mean to say that Mr. Everitt agreed you should deduct that sum from him?

A. I do, and never heard any complaint from it whatever; this is the first I ever heard anything of it whatever.

Q. With whom was that agreement made?

A. I presume it was made with Mr. H. S. Hale and myself, but more particularly Mr. Hale, because he had the charge of the Centennial stand.

Q. Were you ever present when he agreed with any one that that money should be taken from him?

A. I think I was.

Q. Is that the best answer you can give me; that you think you were; cannot you speak positively?

A. Yes, sir; I know that was the agreement.

Q. Then, if you know that such was the agreement, tell me who it was made with?

A. It was made with Mr. H. S. Hale and myself.

Q. With both of you or one of you?

A. I presume we were both together. I do not recollect exactly about that.

Q. You do not remember whether it was made with both of you or one of you?

A. I do not.

270 Q. Do you know which one it was made with?

A. I think we was all three together.

Q. Where was it made?

A. I think it was in our office. I am quite sure it was.

Q. When was it made?

A. About Centennial time; I do not know exactly the date.

Q. The stand was yours, was it not, at the Centenial?

A. Yes, sir; excepting a part that Mr. Everitt had beside us; we made an agreement to take his with ours.

Q. Was not that place obtained for you?

A. I do not know as it was.

Q. Do not you remember that it was taken by Mr. Everitt simply to accommodate you and give you more space and room?

A. I do not recollect.

Q. But you do not say such was not the case?

A. I do not recollect any such thing as that.

Q. Did Mr. Everitt have any goods or inventions on this space?

A. It seems to me he had a washstand there, but I am not quite sure about it.

Q. Was not the washstand yours?

A. I guess he had not paid for it; it was ours.

Q. Then it was yours, was it not?

A. He hadn't paid for it. I do not believe he ever took it. I guess we have it now; it is good for nothing.

Q. Then it was yours, was it not?

A. I do not think we considered it so at the time.

Q. I do not care anything about that; I do not want what you consider or did not consider. I want the fact—is not it yours, and was it not yours at the time?

A. I guess it was.

Q. Is it not yours at this time?

A. Yes, sir; it is now.

Q. Was it not then?

A. We did not consider it so.

Q. I am not asking you what you considered; was it not yours?

A. I do not know anything about that.

Q. Who made that washstand?

A. We made it in our factory.

Q. With your labor and your money?

A. Oh, yes.

Q. Then why did it belong to anybody else?

A. I think it was to pay us for that washstand.

Q. If he wanted to buy it?

A. He claimed a patent on it; he wanted us to make him one, and we did so. He wanted to exhibit it.

Q. All the other goods on exhibition there belonged to you, did they not?

A. Yes, sir; at least I do not think of anything but what did.

Q. You occupied all the space, did you not?

A. Yes, sir.

Q. Then why should Mr. Everitt make such an agreement as you have stated to pay you one hundred dollars for nothing?

A. That was to advertise his foreign patents. He was to have the privilege of coming there, and something of that kind, to show up our beds to foreigners and sell patent rights. That is the way I un-

derstood it; he was to have the privilege of selling them whenever he pleased.

Q. He had the right to sell the bed, had he not, to anybody he pleased without it?

A. He had the right to sell the patent right. He always claimed to have the right to take out letters patent in foreign countries, and he used to come there and show up our beds to his customers, but he had no business to sell our beds.

Q. Did he go there to sell the beds?

A. I presume he did. I was there a very little myself; he was there most of the time, Mr. Everitt was, at the Centennial.

271 Q. You had no right to interfere with his right of selling his patent rights to foreigners, had you?

A. No, sir.

Q. And yet you say he agreed to give you $100 to let him do it?

A. Yes, sir; for having the privilege of coming and showing, and that was to fix the stand up; I think we did the most of it, put around a very nice railing, and all that thing.

Q. But was it not for your benefit?

A. I presume it was, but for Mr. Everitt's benefit at the same time.

Q. Did not you have some one there to exhibit this bed for your own benefit?

A. Yes, sir.

Q. Can you tell me whether the beds and bedsteads manufactured since 1875 have the improvements on which were patented by C. Kilburn?

A. I do not recollect the exact dates of that patent.

Q. That I have not asked you; but have the beds and bedsteads which were manufactured since 1875 had on them the patent which was patented by C. Kilburn?

A. I do not recollect the date of the patent; I do not know when the patent was taken out; but all that we have made since the date of the patent have had them on.

Q. In answer to a question asked you the other day, on cross-examination, as to who your attorneys were, when I asked you whether you had other attorneys besides Mr. Mason in reference to this matter, you answered yes; but you did not tell me who those attorneys were?

A. The two Mr. Howsons; they have always been our patent lawyers. They have been for a number of years.

Q. The same gentlemen who were called and examined in this case?

A. Yes, sir.

Re-examined by Mr. OTTERSON:

Q. A great deal has been said about this washstand; I mean this washstand that was at the Centennial Exhibition, and that was on the platform there erected for Mr. Everitt; you say it was made by your firm; do you know how your firm came to make it, or by whose order it was made?

A. It was made by Mr. Everitt's order.
Q. You made it for him?
A. Exactly.
Q. Who furnished the specifications and drawings, if there were drawings?
A. Mr. Everitt.
Q. Was it an invention; did he claim it to be?
A. He claimed it.
Q. And took this means of bringing it into notice?
A. Exactly.
Q. He was to pay you for it, but never did; is not that it?
A. That is the way I always understood it.
Q. Then do you mean to be understood as saying—or what do you mean to say with reference to his bringing customers to the stand—that that was a privilege accorded to him by yourselves, for a consideration?
A. Exactly; to show up his patent.
Q. That and the bedstead?
A. That and the bedstead. He had the privilege of coming around the stand any time he pleased.
Q. And when the Centennial was over the charge was made to him in his account, without objection, and he gave you a receipt for it?
A. Certainly; I never heard any complaint about it.
Q. Has it ever been referred to since, until this litigation?
A. Not to my knowledge.
Q. To avoid confusion I want to ask you whether you meant to say, in your cross-examination the other day, that you went to Washington with Mr. Stevens on the subject of the patents for folding beds?
A. No, sir; never.
Q. You went to Washington with him?
A. I went to Washington with Mr. Stevens about the chariot chair, but never went on the bed business.
272 Q. Then that trip had nothing to do with the folding-bed business?
A. Nothing at all.

OWEN D. ROBERTS recalled and examined by Mr. OTTERSON:

Q. Can you state what all the items of this charge of $90.80 were?
A. I can. I brought a memorandum with me. I have a copy of the bill here, but, unfortunately, the book which contains it has not been placed among the books which have been brought here to-day. I can produce the book. The bill is dated 16th May, 1876; Mr. E. E. Everitt to Hale, Kilburn & Co., one platform $25; carpet for same, as per bill, $40.80; 9 feet of railing and posts, $15; lettering sign, $10; total, $90.80. The book containing this charge will be produced.
Q. On page 5 of your testimony-in-chief on behalf of the plaintiff, speaking of the contents of the sales books, you say "that it is

the book of charge in all cases except to retail parties shows bills subject to a cash discount;" will you tell me what you mean by that expression?

A. I do not think the reporter has punctuated that correctly. I will read it as I gave it: "The sale book, which is the book of charge, in all cases except to retail parties, shows bills subject to a cash discount;" that is, all bills in that book, except bills to retail parties, are subject to a cash discount.

Q. On page 13, you say—No! that is Mr. Hoffman's testimony—he says: "That the copy bill book discloses the fact that they have taken off of the long price bills from twenty-four and a half to thirty-three and a third discount to their New Yark store; the Boston and Baltimore stores are not so much. Is that so; and, if so, is there a reason for it?

A. It is not so, as Mr. Hoffman puts it. Since the establishment of the Baltimore store the discounts to New York and Baltimore have been the same precisely. The Boston store was three and one-third per cent. less, for the reason that the first year we agreed to pay one-half the rent of the Boston store, and in consideration of our part of that expense we made the discount three and one-third less than to the Baltimore and to the New York store. After the first year the discount to these stores was the same.

Q. In establishing these branch stores in New York, Boston, and Baltimore was there any purpose in that connection with reference to the introduction of these beds?

A. That was the sole purpose of the establishment of these stores; that is, it was made the purpose in the minds of the men who took charge of the stores at Baltimore and Boston.

Q. They had opened the stores for their individual interests, but the idea in taking your goods was to introduce those specialties in those cities?

A. Yes, sir.

Q. And that was the purpose of your firm in assisting these stores; to give market to these goods?

A. Yes, sir.

Q. None of the expenses of those stores were charged to this account, were they?

A. None but the rent that I speak of.

Q. But that was not charged to Mr. Everitt's account, was it?

A. No, sir; not to Mr. Everitt's account.

Q. Mr. Hoffman says that the first sale of these goods was made on the 7th of September, 1874; is that so?

A. That is not so. The first charge in the sales book shows a bed delivered to R. Freeman September, 1874. That bed was delivered to him with the understanding that if he could not sell it it was to be returned. It was returned because he could not sell it.

Q. It has not been said when the first actual sale was; do you remember?

A. I do not.

Q. Have you any recollection in reference to the books as to the

order on the sales book prior to 1876; Mr. Hoffman refers to such a state of things in those books?

A. The only difference between the books that I can detect is that previous to that time the folio page of the order book was not
273 put on the bill head, and consequently did not show in the sales book, which is the only difference I can see in the books prior to and subsequent to that date. It did not affect the correctness of keeping the books at all.

(Mr. Otterson, in personal explanation, says that in answer to the call for the production of the Everitt patent papers, he stated, on page 40, that they were in the envelope sealed up and in the hands of the prothonotary. He now says that that was a mistake. The papers were never in the possession of the defendants, as far as he knows, but always in the possession of Mr. Everitt.)

Q. In the bills or charges on your books for goods transferred to the New York store, were only bedsteads included, or were there other articles?

A. In the bills which were sent to the New York store?

Q. Yes, sir; and which were referred to [by] you in your testimony on page 127.

A. Yes, sir; there were other goods, such as springs, flexible springs, and mirrors.

Q. You stated in your former testimony that the actual cash payments to Mr. Everitt for royalties would not correspond at all times, in amount, with the receipts, and that the difference was made up in charges and merchandise against it; have you examined that account to see what those particular items of charge were?

A. Yes, sir; I have a memorandum here. (An account of the items of merchandise which Mr. Everitt received as cash, taken by the witness from the books now present, produced by him, and handed to Mr. Bowman.)

Q. In your cross-examination you stated that the defendants sold the Everitt bedstead to Daniel M. Karcher & Sons?

A. I do not think I stated that they sold it. I think I was asked the question, but could not answer.

Q. Do you know now whether they did?

A. Yes, sir; we did.

Q. Can you turn to the book in which there is a record of the sale?

A. Yes, sir; I can; but that book is not here. It was intended that it should be brought down with the books which have been brought here to-day, but I find that the book is not here. It can be produced.

Adjourned until Monday next, Dec. 8, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *December* 8, 1879.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. C. Kilburn, Mr. H. S. Hale.

Re-examination of OWEN D. ROBERTS resumed by Mr. OTTERSON.

Q. You said, in giving the receipts for cash, that the cash paid would not correspond with the amount of the receipts, and that the difference was merchandise or other things, which was charged to Mr. Everitt. Will you state what merchandise was charged to him from time to time; can you do so?

A. I did at the last meeting, and handed him the account. (Account handed the master.)

Q. What is that paper?

A. It is an account of the charges shown in our ledger of charges for cash, merchandise, and interest items against Mr. Everitt.

Q. That is not cash then, is it?

A. Yes, sir; it is, and shows a cash charge of $162.50.

Q. This is the same schedule that was produced before the master at the last meeting?

A. Yes, sir.

Q. And since that it has been verified by Mr. Everitt and yourself comparing it with the books?

A. No, sir; not comparing it with the books, because Mr. Everitt said it was right.

Q. Is it right—because the books are here?

A. Mr. Everitt was to come to our office to verify it, according to agreement, as I understood at the close of the last meeting, and Mr. Everitt came and said it was all right. He came there to our office on that understanding, I think, with Mr. Hoffman, and declared that there was no use in looking at the books.

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Mr. BOWMAN: Mr. Everitt says that he did not say it was all right, but that he said he did not know whether the figures were right or not; that it would be right if the master would say so.

Mr. OTTERSON: The question is not whether the master agrees to it; the question is whether the items of interest and cash, accounted for as merchandise, were right or not.

Mr. BOWMAN: Mr. Everitt cannot admit that.

By Mr. OTTERSON:

Q. What passed between you and Mr. Everitt upon the subject of that paper?

A. According to arrangement, Mr. Everitt came to the office of the Hale, Kilburn & Co. manufacturing establishment on Thursday last, in company with Mr. Hoffman, and agreed that there was no use in looking at the books, because, he said, that account was an exact copy of the charges in the book, and that he was satisfied it was an exact copy, and did not want any examination of the books.

Q. And brought that paper in his hands?

A. Yes, sir; he brought the paper with him.

Mr. OTTERSON: I offer that paper in evidence.

Mr. BOWMAN: To which I object. The witness, I think, has confounded this statement with another account, which was referred to at the last examination. As my client now states that he has no

knowledge of the accuracy of the figures contained in the statement, I must insist upon the production of the books.

Mr. OTTERSON: I understand that the books are not here simply because the plaintiff, in person, said that there was no need of producing them, the statement submitted being correct. The books will be produced hereafter, if necessary. I ask that the statement be put upon the minutes.

The statement is as follows:

1875.			
Oct.	31.	Expense	$162 50
Feb.	9.	Mdse., as per sales book "A," 123	7 50
June	14.	" " " " " " 583	1 17
July	8.	" " " " " " 657	15 50
Aug.	18.	" " " " " " 760	1 50
Nov.	4.	" " " " " "B," 44	1 05
"	17.	" " " " " " 93	50
Dec.	30.	Interest	16 15
1876.			
Feb.	24.	Mdse., as per sales book "S," 630	12 50
Mar.	3.	" " " " " " 689	2 00
"	21.	" " " " " " 807	5 67
"	22.	" " " " " " 816	32
"	24.	" " " " " " 826	25
May	15.	" " " " " "C 1," 101	90 30
Aug.	8.	Interest	21 54
July	10.	Mdse., as sales book "C 1," 234	24 60
Aug.	31.	Interest	7 16
Sept.	8.	Mdse., as sales book "C 1," 314	6 00
Dec.	30.	Interest	36 50
1877.			
Aug.	20.	Mdse., as sales book "A 1," 453	3 00
Oct.	2.	" " " " "A 2," 540	4 00
"	16.	" " " " " 563	4 00
Nov.	16.	" " " " "A 1," 553	4 50
			$428 71

By Mr. OTTERSON:

Q. You were asked, in cross-examination, if you knew the firm of Swann & Clark, of this city; can you say now whether they purchased goods of you?

A. Yes, sir; they did.

Q. Have you a book here showing their account?

A. Yes, sir.

Q. Is it the ledger?

A. No, sir; sales book.

275 Q. Will you turn to it, or will the sales book show all the sales to them?

A. Yes, sir.

Q. Then please turn to the sales book and say how many different sales of these folding beds you made to that firm.

A. Only one sale to that firm up to the time the litigation commenced in regard to the folding bedsteads.

Q. Do you mean to say that since the litigation began you have sold any Everitt bedsteads to them?

A. We have sold, I think, one or two folding beds to them this year.

Q. Are they Everitt bedsteads?

A. I do not know whether they are Everitt bedsteads or not; they are folding bedsteads.

Q. Do you know whether they were bedsteads that were manufactured under the Everitt patent, or under the other patents?

A. I do not know.

Q. You made but one sale to them prior to this litigation?

A. Yes, sir.

Q. Of how many bedsteads?

A. One folding bedstead.

Q. What is the date of that?

A. September 13th, 1876.

Q. And in what book is it?

A. In sales book "C" 1, page 323.

Q. Did you sell D. M. Karcher & Sons?

A. Yes, sir; we did.

Q. How many sales did you make to them?

A. One or two.

Q. Will you refer to them?

A. Yes, sir. (Referring to the sales book.)

Q. Can you say whether it was one or two?

A. Yes, sir; two sales. One sale is recorded in sales-book "B," page 767, March 14, 1876, one bedstead with spring and mattress.

Q. Now the other sale; state what it was?

A. The next sale was the sale of two bedsteads, June 15th, 1876, and recorded in sales book "C" 1, page 188.

Q. Were they both Everitt bedsteads, or folding bedsteads?

A. Both folding bedsteads; yes, sir.

Q. And those are all the sales you made to that firm?

A. All the sales of folding bedsteads.

Q. Did you sell to Cameron and Weber?

A. Yes, sir.

Q. Will you state what the sale was, and when made?

A. The sale is of one folding crib, made on September 8th, 1876, recorded in sales book "C" 1, page 315.

Q. Is that the only sale you have made to that firm?

A. Yes, sir.

Q. Did you sell to Kampé & Co.?

A. Yes, sir.

Q. Will you state what, and when?

A. A sale of one folding crib, December 8, 1874, and recorded in order book "M," page 145. It does not show in the sales book, because it was a cash sale, paid on delivery.

Q. Is that the only sale of a folding bed to that firm?
A. Yes, sir.
Q. Did you sell to Mitchell & Rummelsburg?
A. We did not sell them up to except within a few weeks of this time.
Q. How recently was the first sale made?
A. Within six weeks of this time.
Q. Was that an Everitt bed?
A. I cannot say; it was a folding bed.
Q. Was it more than one?
A. I cannot say from positive knowledge. We have not the books of that here.
Q. Did you sell Trymby & Cunningham?
A. No, sir.
Q. Not at all?
A. No folding beds.
276 Q. Did you sell Freeman & Miller?
A. We did not sell them; we sent them a bed on sale, which was returned to us.
Q. One bed?
A. Yes, sir; one bed.
Q. And it was returned to you?
A. Yes, sir.
Q. That was a Philadelphia house?
A. Yes, sir.
Q. Did you sell Moore, York & Howell?
A. Yes, sir.
Q. When?
A. There was a sale to Moore, York & Howell, one bedstead November 30, 1877, recorded in sales book "A" 1, 569.
Q. Did you make any other sale to them?
A. No, sir; not of the folding bedsteads.
Q. Did you sell to Allen & Bro.?
A. Yes, sir.
Q. State when and what.
A. One sale; one bedstead, May 5th, 1875, recorded in sales book "A," 436; two bedsteads, August 11th, 1875, sales book "A," 744; one bedstead, November 6, 1877, recorded in sales book "A" 2, 591.
Q. Did you sell to C. B. Mench?
A. No, sir.
Q. Did you sell to H. C. Kramer & Co.?
A. No.
Q. Did you sell to A. Barlow?
A. Yes, sir.
Q. State what and when.
A. Sale of one bedstead, recorded in order book "D," page 82, September 10, 1878. The order book is not produced, because it is now in active use at the store; it can be seen there. That was a cash sale, and did not go into the sales book at all.
Q. Did you use the word "wholesale," in your examination before, as applied to these sales, and if so, what did you mean by it?

A. We apply the term wholesale——

Q. I am talking about you—not anybody else.

A. I applied the term wholesale to these sales simply to designate the difference between the furniture trade and the retail trade, which was for people who designed to use the bedsteads for their own wholesale use.

Q. Buying them out of your store?

A. Yes, sir.

Q. And it was in that sense of the word that you used the term "wholesale?"

A. Exclusively; yes, sir.

Q. These are all city firms that you have spoken of?

A. Yes, sir.

Q. Do you know where these goods were delivered in any case?

A. I do not.

Q. That would not come under your knowledge?

A. No, sir.

Q. In your cross-examination you were asked with reference to an entry of May 8th, 1875, one crib, No. 3, plain, and mattress, from the statement of the New York store; and then you were asked what was the price of it, and your answer was "$50." Did you mean the crib and mattress when you said "it?"

A. I did.

Q. Then the $50 was the price of both, was it?

A. Yes, sir.

Q. Can you turn to the book, or have you any means of telling us what the price of both was, as there are two articles?

A. The price of the crib in that instance was $40—the list price.

Q. And the mattress was the $10, making $50; was that it?

A. Yes, sir.

277 Q. Then, in settling with Mr. Everitt, you settled for the list price of the bed, exclusive of mattress?

A. Yes, sir; less the discount.

Q. Undoubtly; the discount taken from the bed alone, and not from the price of the mattress?

A. Exactly.

Q. Was there on the same date an entry of one bed, No. 3, veneered and springs?

A. Yes, sir.

Q. Tell us what was the price of the bed, independently of the springs?

A. The price of the bed was $95—the list price.

Q. In your answer, on cross-examination, you said that the price of it was $120; that is, that was the price of the bed and springs?

A. Yes, sir; that is the price for which they were sold in New York, at the retail store.

Q. Then, in this and that instance you settled with Mr. Everitt upon the list price of the bedstead, deducting the discount?

A. Yes, sir.

Q. On the 22nd of May inquiry was made about one bed, No. 3, veneered, and spring; have you that?

A. We have a statement showing that; yes, sir.

Q. They sold together, you said, for $112.50. I want to know what the bed sold for?

A. The list price of the bedstead was $95.

Q. On the 2nd of October, 1875, one bed, No. 1, and spring. You were asked what that sold for, and your answer was $130 for the articles. I want to know what was the list price of the bed?

A. $140 was the list price of the bed.

Q. And you settled with Mr. Everitt upon the basis of $102.06; does that appear there?

A. That appears in his account book; yes, sir.

Q. How do you get at the $102.06?

A. By taking ten per cent. and ten per cent., and ten per cent. from $140, which leaves a net of $102.06.

Q. September 18, 1875, the return from the New York store of that date shows a sale of two beds, No. 3, plain, and springs, $193.56. What was the list price of those bed separately?

A. The list price of the beds was $80 each.

Q. Do you know what they sold for separately?

A. I do not; I have no means of telling. They were sold in total, and reported to us in total.

Q. The two beds and the springs were sold for a round sum?

A. Yes, sir.

Q. Is there an entry there of one bed, No. 1, plain, and springs?

A. $160 for the two?

Q. Yes, sir.

A. Yes, sir.

Q. Do you know what they sold for separately?

A. I cannot tell what they were sold for, but I can give the list price. They were sold for a round sum.

Q. Does it appear whether the two beds just spoken of, of September 18, 1875, of No. 3, plain, and springs, sold for $198.60, were sold to one person or to different persons?

A. It does not appear.

Q. What was the list price of this last bed sold for $160?

A. $140.

Q. On October 9, 1875, was a sale of one bed, No. 3, and spring; do you know what that sold for?

A. $112 for the two.

Q. They were sold in a lump, were they?

A. Yes, sir.

Q. And you have no means of telling what they sold for seperately?

A. No, sir.

Q. What was the list price of the bed?

A. $95.

278 Q. October 30, one bed, No. 0, three-quarters, springs, $67.50; can you state what were the separate prices for which they were sold?

A. No, sir.

Q. What was the list price of the bed in this instance?

A. 45.

Q. Then you are not able, as I understand, to tell in any of those instances what was the separate price obtained for the articles in the sale?

A. No, sir; they were not reported; always reported in gross.

Q. I understand the substance of all this testimony about sales is this: That you made sales from your store in Philadelphia to consumers, and sales to parties who were in the trade in the city of Philadelphia also.

A. Yes, sir.

Q. Outside of the city of Philadelphia you sold to the branch house in New York, and to the special agencies in Boston, Baltimore, Chicago, and Pittsburg, and you sold by travelling salesmen, and that is all, is it not?

A. No, sir; we sold that way, and sold also on orders from different parties by letter.

Q. That did not come at the instance of travelling salesmen or otherwise?

A. Yes, sir.

Q. To what class of individuals alone did you sell in quantities?

A. To the branch stores and special agencies.

Q. The other sales were an item at a time?

A. Generally a single item.

Q. The article itself is an expensive one, is it not?

A. Yes, sir.

Q. State, if you please, what was the purpose of establishing these branch stores and special agencies?

A. To make an outlet for the sale of these bedsteads.

Q. How were the travelling salesmen paid; by salaries or commissions, or by profits on the goods over and above a fixed rate at which they were furnished?

A. Generally by commission.

Q. And not by salary?

A. With the exception of only one man, whom, I think, we paid by salary.

Q. No one had any interest in the sales of the goods over and above a fixed valuation?

A. No, sir.

Q. They were not consignees, in other words?

A. No, sir.

Q. On page 215 of the testimony you said, in answer to Mr. Mitchell, referring to a letter which he produced, written to Mr. Everitt in reference to No. 11 beds, that there was no dispute between Mr. Everitt and the defendants except as to the monthly accounts, and this letter was produced, referring to the No. 11 bed—a letter, I think, written by yourself, and you said that it did not change your recollection; but you did say that you had not seen the testimony at all, and that most of your testimony was taken long before anything at all in regard to this, which did not seem to be so, referring to this. Have you anything to say about that?

A. Either I did not state correctly, or else I was not reported correctly; but my understanding of my answer to that question of Mr.

Mitchell was that it referred to transactions which occurred several years before the taking of this testimony, and that my answer in regard to any dispute between the defendants and Mr. Everitt related to what I knew of former years. The question of the letter did not enter my mind at all. In fact, had the question been asked me whether I recollected seeing it, I would have answered no, because a good many things have transpired which, unless brought to my mind, I would not have called up. The whole matter was an open matter. It was not secret at all; every one knew of the No. 11 bedstead, so that I do not know my object in making such an answer.

Cross-examined by Mr. BOWMAN:

279 Q. Speaking of this dispute, do you remember the difficulty Mr. Everitt had in getting to see the books of the defendants?

A. I remember an instance in which he asked to see the books, and was refused, I think, for two days. The third day, I think it was, the books were offered to Mr. Everitt by myself—any book that he chose to look at.

Q. How did you offer them?

A. By making the offer to give him any book he chose to call for for examination there at the office.

Q. Was Mr. Everitt alone?

A. It strikes me that Mr. Hoffman was in the room.

Q. Then I understand that you manifested a willingness to show him any book that he might call for?

A. Yes, sir; because such were my orders from the firm.

Q. Did you so state to Mr. Everitt?

A. I did, as near as I can recollect.

Q. What did Mr. Everitt say?

A. I could not say.

Q. You do not remember what his reply was?

A. I do not.

Q. Did you hand him any books to examine?

A. I did not; no, sir; not one.

Q. Why did you refuse to let him examine all the books?

A. I never refused him at all

Q. Did you know what the firm did?

A. I do not.

Q. In connection with these books do you remember, at the same time, or about that time, having a conversation with Mr. Everitt, in Mr. Kilburn's presence, with reference to the receipts which he had been giving the firm for money paid to him on account of royalty?

A. I cannot say that I recollect any particular transaction.

Q. Do you remember his refusing to sign receipts upon the ground that the amounts paid him he did not think were correct, and that Mr. Kilburn's answer was that he could go behind the receipts at any time if they were not correct?

A. I do not remember Mr. Kilburn ever saying any such thing.

Q. Do you remember any one else connected with the firm saying so?

A. A member of the firm?

Q. Any one connected with the firm.

A. I remember myself saying that if Mr. Everitt could show, at any time, we had not paid him what was due him he could collect it without regard to the receipts given.

Q. And he signed those receipts with that understanding, did he not?

A. I do not know of any understanding with him to that effect.

Q. He refused to sign unless you explained to that effect, did he not?

A. I cannot give a positive answer about that.

Q. What is the best of your recollection?

A. My recollection is that Mr. Everitt spoke to me about that time. I cannot recall the time nor the circumstances, but I do remember Mr. Everitt asking me one time if those receipts bound him. I told him that if he could at any time show w ehad not paid him what we ought to, the receipts could not bind him.

Q. I think you have already stated that you are the chief bookkeeper of this firm?

A. Yes, sir.

Q. And you therefore have a general knowledge of all the books kept by the firm, have you not?

A. Yes, sir.

Q. Can you state to me in what books they keep an account of the manufacture of the Everitt bedsteads, and the number made?

A. Yes, sir; I can.

Q. What books are those accounts kept in?

A. A small blank book, about 8 by 10 inches.

Q. Do you keep that book?

A. Yes, sir; I do.

Q. Is it here?

A. I think not. I know it is not.

280 Q. Has it been here during this investigation?

A. Yes, sir; two or three of them.

Q. Two or three of these books?

A. Yes, sir; two or three of the books. They are small books, and as fast as one was used up another was taken.

Q. They are all in existence, are they?

A. I think they are.

Q. Can you tell me where they are?

A. At the office of Hale, Kilburn & Co.

Q. Under your care?

A. Yes, sir.

Mr. BOWMAN: I call for the production of those books.

Q. How many have been here?

A. I cannot say; but I am under the impression that there were at least two.

Q. From the books which you have examined during the investigation of this case, are you able to state how many of the Everitt bedsteads were manufactured by the defendants?

A. I am not able to say, for the reason that the first, and quite a number, were made by simple day work, without taking an account of the number made or the patterns made.

Q. Did you make up the statements which were furnished to Mr. Everitt from time to time in settling his royalty with him?

A. I did not.

Q. Who did that?

A. The first man that made them out was Mr. John Dimmock, the assistant book-keeper; and the next was John B. Kilburn.

Q. Were they made out under your supervision?

A. Yes, sir.

Q. And according to your instructions, from the books?

A. Yes, sir.

Q. Can you state whether any statement was ever furnished to Mr. Everitt of the amount or number of bedsteads manufactured by the defendants?

A. None, to my knowledge.

Q. Did you know that he was entitled to such a statement?

A. I did not.

Q. The firm, defendants, instructed you to make out these statements, I suppose?

A. Yes, sir.

Q. Did they or yourself regulate the basis upon which Mr. Everitt should be allowed royalty?

A. They, always.

Q. Would they go over every item of sale and instruct you what amount to take as your basis upon which to allow him royalty?

A. No, sir.

Q. How did they arrange that?

A. There was a fixed discount given to wholesale dealers, and that was the basis on which the royalty was figured.

Q. And the defendants fixed that discount?

A. Yes, sir.

Q. Mr. Everitt had no voice in that?

A. No, sir; not to my knowledge.

Q. That was what governed you, was it?

A. Yes, sir.

Q. And the list price had nothing to — it?

A. The list price always had something to do with it.

Q. Did it govern you in fixing the amount upon which you allowed Mr. Everitt royalty?

A. Certainly.

Q. In what way?

A. There was a printed list price of every style and size of bedstead. From that list price, to the wholesale dealers, there was a certain discount; and that list price, less this discount, was the basis on which Mr. Everitt's royalty was figured.

Q. In answer to Mr. Otterson, you went over quite a number of sales made to different firms; were they retail or wholesale sales?

A. They were sales to the furniture trade, in small quantities, an item at a time.

281 Q. They were considered wholesale sales, were they not?

A. Only as designating them from consumers; the term wholesale was used simply to designate the difference between the furniture trade and consumers. It did not indicate large quantities, at all.

Q. Had it any difference in price?

A. I do not get the connection.

Q. Did these firms pay you the retail or the wholesale prices?

A. No, sir; they paid us what we call the furniture price.

Q. That would be a wholesale price, would it not?

A. That would be what we call a wholesale price in Philadelphia, as I say, in contradistinction to consumers. These men were allowed a discount.

Q. The books show, as you have already testified, the prices you received for these various articles sold to the various firms?

A. Yes, sir.

Q. And the books also show the discount taken off, do they not?

A. Yes, sir. That is, in most cases; sometimes the discount was taken off to a furniture dealer and no price charged.

Q. Do not all of the sales which you have referred to appear on the books in this way: first, the price obtained for the articles, and then the amount of discount taken off?

A. Not in every case—generally.

Q. And is not the discount, as appears by your books, generally, more than ten per cent.?

A. Not to city trade.

Q. What is it to city trade?

A. City trade is ten per cent.

Q. And what to the other trade?

A. To the general furniture trade, outside of the city, 20 per cent; both are subject to five per cent. for cash, but to special agents and branch stores the discount was still larger.

Q. In referring to articles sent to New York and to different stores, you separated them, and spoke of the charges being for other goods besides the Everitt bedstead, and, when asked what those goods were, you said they were, in many instances, mirrors and springs; will you tell me how those mirrors and springs were sent with the Everitt bedstead?

A. They were placed in the bedsteads, sent in the same box, precisely, as the mattress or pillows were, if shipped with the bedstead.

Q. You mean they were made up as a part of the bedstead, do you?

A. No, sir; I do not.

Q. Is not the mirror built in the bedstead?

A. No, sir.

Q. Was not the bedstead built to receive the mirror, just the same as a frame for a looking-glass?

A. The bedsteads are built either to receive a mirror or a panel; either can be put in.

Q. But would it not take a differently constructed bedstead for a mirror than for a panel?

A. Not in the least.

Q. Then the mirror would go as a part of the bed, would it not?

A. It would go as part of the bed, yes, sir; part of the make-up of the bed.

Q. Just the same as a wardrobe with a mirror front in the doors?

A. No, sir.

Q. Are they not all part and parcel of the wardrobe?

A. No, sir; the mirror in the wardrobe is so arranged that it can be never taken out; but the bedstead is so arranged that the mirror can be taken out at a moment's notice, and a panel inserted.

Q. That is one of the conveniences of the bed?

A. Yes, sir.

Q. Did you ever know of a case where a mirror was shipped off with the bed, unless it was part of the bed and sold with it?

A. I do not remember any such instance. I can remember of a bedstead being sent away without a mirror, or without a panel.

282 Q. But very few, were they not?

A. There had been such cases. I do not call them all to mind now.

Q. Do — know D. F. Haas?

A. I do not think I ever heard the name before.

Q. If the defendants sold him a bedstead in December, 1877, or in January, 1878, for $300, will their books show it?

A. Yes, sir.

Q. Will you be kind enough to turn to that account?

A. I cannot now, because I do not know what we sold, and have no knowledge of the account.

Q. It was sent to the New York branch stores?

A. A great many beds have been sent there that I cannot say have been sold. They are not sold when they go to the New York branch store.

Q. I mean to say it was sold at the New York branch store. (Bill shown witness.)

A. (Referring to the bill.) "January 23, 1878." I am not able to say now, without examining all the bills, whether that bed was returned as sold from the New York store.

Q. Can you show me anywhere in the account which you have furnished as being correct and offered in evidence in this case any entry of that sale?

A. I cannot, at the present time.

Q. Can you show me anywhere the allowance to Mr. Everitt, by the defendants, of royalty on that sale?

A. I cannot now. I would have to look the matter up, being a special thing.

Q. I suppose there is no doubt but that the bill I have shown you is one of the defendants' bills.

A. No doubt but that it is one of the New York store bills. (Referring to the return of sales from the New York branch.) I have the bed. The date was given as January 23, 1878. The bed was sold on December 10th, as the margin of the bill shows, and is returned in their report of December 15th, 1877.

Q. Represented as sold?

A. December 10th.

Q. Represented as sold December 15th?

A. It is in the return of sales of December 15th, 1877.

Q. At what price?

A. $270, which agrees with the bill I have. $300, ten off, leaves $270.

Q. Can you show me the return to Mr. Everitt of that particular bed?

A. I can. (Referring to Exhibit No. 10.) In this book the dates are given on which the sales are made in New York, so far as we can ascertain them, and he is credited on December 10, one bedstead, No. 14, ebony, three-quarters, list price $225.

Q. How do you know that is this bedstead?

A. Because it is in the return from the New York store, and under the date under which that is charged.

Q. Is that the only bed sold or returned on that date?

A. That is the only one of that number or date.

Q. You say it is the only one of that number and style?

A. Yes, sir.

Q. And you say they have allowed Mr. Everitt the royalty on $220?

A. No, sir; $225 list. We allowed him royalty on that, less the discount.

Q. Ten, and ten, and ten?

A. No, sir; it, at that time, was one-third.

Q. Then you have allowed him a royalty on $225, less one-third?

A. Yes, sir; which would net $150.

Q. The bedstead sold for $270?

A. The bedstead, with mattress and spring, finished in ebony, graved and gilded, mattress and springs and pillows, were all included in the price of $270.

Q. That information you get from the bill and receipt I showed you, and not from the book?

A. I get it from the return of the New York store, which I have here. I merely used the bill as a reference.

283 Q. Can you state whether the defendants did any business with Abraham G. Sherwood?

A. I do not know the name.

Q. Please turn to the return from the New York store for February, 1878.

A. In the return of February 2d, 1878, we have the return of a sale on January 28th of one Centennial crib and mattress, $125; is that the one?

Q. That is one folding crib and bedstead, $125?

A. That is the only one of the kind in the February return.

Q. State at what price that was returned to Mr. Everitt.

A. I do not (referring to Exhibit No. 10) find that in the return at all.

Q. I call your attention to the supplemental account (Exhibit No. 1 shown witness); see if it is in there.

A. (Examining the account.) No, sir; I do not find it in here, either.

Q. See if you find it here. (Exhibit No. 2 shown witness.)

A. (Examining the account.) It is not in there.

Q. Look at this account (Exhibit No. 3 shown witness) and see if you can find it.

A. It is not there.

Q. Then there is no evidence of that ever having been returned to Mr. Everitt?

A. No, sir.

Q. In that respect, then, the accounts are not accurate?

A. It is evident that that particular item has been left out.

Q. Is that one of the books (book shown witness) that contains the number of bedsteads manufactured by the defendants?

A. Yes, sir.

Q. How many of those have you?

A. I cannot say; two or three.

Adjourned until Monday next, December 15th, 1879, at 3 p. m.

PHILADELPHIA, *Monday, December* 15, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt.

On account of the absence of Mr. Otterson, adjourned until Monday next, December 22d, 1879.

PHILADELPHIA, *Monday, December* 22*d*, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

HENRY S. HALE recalled and examined by Mr. OTTERSON:

Q. Will you just please explain what are slat-bottom beds?

A. What we mean by slat-bottom beds is just the slats alone, put into the bed crosswise for the mattress to rest upon.

Q. Do you know anything about this Centennial platform business, and what the arrangement was between your house and Mr. Everitt on the subject?

A. I know that Mr. Everitt was to pay for a part of this, which he did.

Q. Did you see the bill of $90.80 that was presented here for expenditures made on Mr. Everitt's account, and do you know whether the bill was correct or not?

A. Yes, sir; that is correct, according to agreement.

Q. Mr. Everitt said that you bought the carpet, and that he objected to it; is that so?

A. It is not.

Q. What part of it is true?

A. I went down to a store on Chestnut street and selected the carpet. The same day I informed Mr. Everitt what I had done, and he went with me to the same store and saw the pattern.

Q. What did you do then?

A. The carpet was purchased and put down on the Centennial space.

284 Q. Was it purchased by the two of you when you were there together for that purpose?

A. I selected when I went first, and Mr. Everitt went with me afterward, and said that the selection was very good, and the pattern good.

Q. When was it ordered?

A. That day.

Q. Who ordered it?

A. I might have ordered it the first time. At any rate, we went there and decided that that carpet was all right.

Q. What became of it after the exhibition was over?

A. It was delivered to Mr. Everitt. In fact, he took our share of it—the part that was on our space, also.

Q. Do you know anything more about it?

A. No, sir.

Q. Do you remember what that carpet cost?

A. I do not remember what the carpet did cost.

Q. Something has been said about experiments that Mr. Everitt was conducting with a view of improving the bedstead, I suppose. Do you know anything about those bedsteads; and, if so, what do you know?

A. All I know about that is: I happened in his store one day while the improvement was going on, and he showed the bedstead to me that he was experimenting on, and I looked it over. I saw that it was out of reason, and would not work, and I said to Mr. Everitt: "Now, if I were in your place I would not go to any more expense, because you will never make it work in the world. You might as well try to get into a tub to row yourself." He was trying to balance the bed with springs without fastening it to the floor.

Q. What was said about the expense of these experiments, if anything?

A. That was all that was said. I told him that if I was in his place I would not go to any more expense, and I believe he dropped it after that.

Q. Mr. Everitt has testified that he acted as one of the agents of your house, having a store in Chestnut street for about a year, and that he was not allowed to make a larger discount than ten per cent. to the trade upon sales. Do you know at what rate of discount settlements were made with him upon the sales which he himself had made?

A. I do. If you will allow me to see "Exhibit No. 10" I can tell you.

Q. Certainly; refer to it.

A. (Referring to "Exhibit No. 10.") The first bed I see here is August 30, 1875, one bed, No. 4, three-quarters, veneered, $95; figured to him at $69.25—that is, 10 and 10, and 10 off; his royalty was figured on $69.25—7 per cent. And also that month and the next month, in October, November, December, the lot of beds we figured at the same rate. January, 1876; that was figured up to February, 1876, when we changed our discounts to all our wholesale agents, and also changed it to him, and only kept off 20 per cent., to which we figured his royalty.

By Mr. BOWMAN:

Q. I did not understand your last remark about figuring the royalty; what do you mean?

A. By figuring off the list price, and on the balance figuring his royalty, down from February, 1876, to the end, I should say—that is, down to the time he gave up the store.

By Mr. OTTERSON:

Q. Those were settlements made with him upon sales made by himself as your agent?

A. Yes, sir.

Q. And entered in this book (Exhibit No. 10) at the time?

A. Yes, sir; and of which he knew all about.

Q. When did you hear any complaint about that mode of settlement?

A. I never heard any complaint up to the time of the commencement of this litigation, except here, in this office.

Cross-examined by Mr. BOWMAN:

Q. You have referred to the carpet in connection with the Centennial stand. Where did you purchase that carpet?

A. I think it was McCallum, Crease & Sloan, but I am not
285 positive; it was a store on Chestnut street. I could not say without referring to the bill.

Q. Do I understand you to say that Mr. Everitt went with you to look at it?

A. To the best of my knowledge, Mr. Everitt went with me the same day to look at that carpet, or to look at the same pattern, to see what I had selected; I am very sure of this.

Q. But you are not positive enough about it to swear to it, are you, beyond all question?

A. I swear to it, to the best of my knowledge and belief, that he did go.

Q. And yet you do not remember where it was?

A. I know it was in Chestnut street, and on the lower side, but I cannot tell you the name unless I see the bill; of course that would speak for itself.

Q. Do I understand you to say that you gave the carpet to Mr. Everitt?

A. Yes, sir; it was delivered to Mr. Everitt, after the exhibition was over, at our store.

Q. Do you not know that the carpet which you have referred to was given to Mr. Everitt in trade for his platform?

A. No, sir; I do not know; I do not remember anything of the kind.

Q. And do not you know that the platform was Mr. Everitt's, bought by him and paid for with his own money, and that your firm wanted it and gave him this carpet for it?

A. It may possibly have been we gave him our part of the carpet for his share of the platform; but his part of the carpet, of course, we had nothing to do with, because it belonged to Mr. Everitt, and he took it away.

Q. Where is that carpet to-day?

A. I am not able to tell you; I do not know what Mr. Everitt did with it.

Q. Do you not know that it is in your store?

A. I do not; I know it is not.

Q. Where is this platform of Mr. Everitt's?

A. I cannot tell you.

Q. Have not your firm got it?

A. No, sir; not to my knowledge.

Q. You removed it, did you not, from the Centennial?

A. We built a new stand at the Centennial.

Q. And took the platform away, did you not?

A. The old platform was taken down.

Q. And taken away by your firm or some one in their employ?

A. Of course; but whether his share was taken by our concern or not I could not say.

Q. Mr. Everitt never got it?

A. Well, I could not say as to that.

Q. You were asked about the discount allowed to Mr. Everitt when he had the store on Chestnut street as your agent; do you not know that the 20 per cent. of which you spoke in your examination-in-chief was the discount which you allowed to your wholesale agents only?

A. I know it was the discount we allowed Mr. Everitt and our wholesale agents; those who bought our beds in quantities and took the sole agency of sellings the beds and pushing the beds, in whatever localities they were; to the retail customers, to whom we sold only one bed at a time, we did not take off so much of a discount, and in a great many cases we sold for net.

Q. It was not the discount you allowed to the general trade, was it, in this city and other cities in this county?

A. Well, I think not; it is the discount we allowed to the wholesale trade.

Q. When you say "wholesale trade," do not you mean to your whole- agents?

A. Yes, sir.

Q. Do you know Mr. Stark?

A. Yes, sir.

Q. Were you present when his patent was purchased and the assignment taken?

A. No, sir; I was not.

286 Q. Did not you write the due bill which was given at that time?

A. I did.

Q. Was not the due bill a part of the first money for this patent?

A. I wrote his due bill and handed that due bill to Mr. Kilburn. I was very busy at the time, and went out. Mr. Kilburn, of course, handed it to Mr. Stark; but I was not present when that was done.

Q. Did you know that it was for the purchase of the Stark patent?

A. Yes, sir.

Q. When was that?

A. That was in the early part of February.

Q. Before this suit commenced, was it not?

A. Yes, sir; I think it was the 23d day of February, the day the due bill was written.

Q. How long after the purchase was it before you received the assignment of the patent from Stark?

A. I never received any assignment.

Q. Who did receive it?

A. I do not know that anybody did. I never saw an assignment until the assignment came up. I can tell by looking it up.

By Mr. OTTERSON:

Q. Came up where? Do you mean before this meeting?

A. Yes, sir; came up before this meeting; sent up from Washington by Mr. Mason (referring to the assignment, Exhibit No. 41). It was about the 28th day of December, 1878, that I first saw that assignment.

By Mr. BOWMAN:

Q. But you knew that your firm owned it long before that, did you not?

A. I knew he had bargained for it.

Q. And knew that you had paid your money for it, did you not?

A. Yes, sir; but, as I understand it, the assignment was to remain in Mr. Mason's hands, which it did, and I never saw it until the date above mentioned.

Q. If it be true that your firm owned the Stark patent and bought it and paid for it, can you explain why the suit was brought in the United States circuit court in the name of Stark, after you owned his patent, against yourselves?

A. The only way that I can explain that is that the suit was brought under the sole advice of Col. R. Mason, of Washington.

Q. Was it not done for the purpose of compelling Mr. Everitt to make some terms with you by which you could get about five-sevenths of his royalty?

A. It was done to see, as I understand, if it would not have some bearing upon Mr. Everitt, as he had repeatedly refused to have anything to do about the purchase of the Stark patent, time and time again, and we felt as though, after buying this Stark patent, he ought

to be made to pay some portion of it; and, under the advice of Col. Mason, as I said before, this suit was brought.

Q. That is hardly an answer to my question. Was not the object of that suit, and the sole one, to get Mr. Everitt to reduce his royalty, or to make some terms with you by which you would get five-sevenths of his royalty?

Mr. Otterson: That question the witness has already answered, and I do not suppose it gains strength by repetition. The witness has already said that it was done with a hope of having some bearing on Mr. Everitt upon that subject.

The Witness: The five-sevenths part of it, then, was simply an offer, as I understand it, on Mr. Mason's part. We never was able, in all this trouble, to get a single offer out of Mr. Everitt in any shape or form, or even able to get one-seventh of his royalty even as an offer.

Q. But, at this time, your firm owned the Stark patent, and you had procured a suit to be brought against yourselves, and, if you had succeeded in getting five-sevenths of Mr. Everitt's royalty, do you mean to say it would have gone to Mr. Stark?

(Mr. Otterson objects to the witness being catechised as to
287 what would be the legal effect of the suit, and because the counsel seems to have overlooked the fact that the record shows that the assignment of which he is speaking was, at that time, and for a long time afterward, held in escrow, and had never been delivered to the defendants.)

A. I do not.

Q. Where would it have gone?

(Objected to by Mr. Otterson.)

A. I have not got as far as that. I do not know where it would have gone. We never expected to get that.

Q. Would not those five-sevenths have gone into the company's pocket and out of Mr. Everitt's?

A. If Mr. Everitt had consented to it, probably it would.

Q. Why was all this purchase and transfer from and by Stark so carefully concealed from Mr. Everitt?

A. I cannot tell you. We acted under the advice of Col. Mason in regard to that matter.

Q. If it is correct, as you said, that you are anxious for Mr. Everitt to enter into some arrangement by which the Stark patent could be controlled, why did you not tell him that it could be bought for a few hundred dollars?

A. He was told that it could be bought for one thousand dollars, and Mr. Everitt replied that he would have nothing to do with it; that it was good for nothing; that he knew all about it long before we purchased his patent, and he would not have anything to do with it. He said that repeatedly in our office, in my presence, to Mr. Kilburn. That was before the purchase of the Stark patent.

Q. Do not you know that after your firm had the title to the Stark

patent you told Mr. Everitt it could be bought from Stark if he (Everitt) would allow Stark five-sevenths of his royalty, which he (Mr. Everitt) refused to consent to?

A. I think Col. R. Mason, in Mr. Mitchell's office, said something to that effect.

Q. Did not you and Mr. Kilburn say the same thing to him in your own office?

A. No, sir; not to my face; possibly Mr. Kilburn did.

Q. If it be correct that your firm had purchased the Stark patent and had an assignment of it before the commencement of this suit, how can you reconcile the fact of your firm, you included, having sworn to the answer in this case that you were not the owners of the Stark patent, and that it had not been assigned to you?

A. For the very reason that we understood from Mr. Mason that it was not an assignment, as it was placed in his hands in escrow, and we thought we were perfectly right in making that statement.

A. And that is the reason why you swore to the answer, is it?

Mr. Otterson objects to the witness being called upon to answer the question twice.

A. That is the reason, because I always understood that it was not to be considered an assignment until it was delivered.

Q. Then I understand you to say that your firm bought the patent and paid for it before you had the title to it, by assignment or any other writing?

A. Yes, sir; to the best of my knowledge.

Q. Do you not know that Mr. Kilburn went to Washington and had the assignment duly and regularly prepared, and that it was executed and kept from the record by Mr. Mason's advice, so that Mr. Everitt would not know it?

Mr. Otterson (to the witness): If you were there, and knew it, you can answer that question; if not, not.

Mr. Bowman: If he knows it, he can answer it, and I object to the witness being told what he can answer.

Mr. Otterson: And I object to this kind of examination.

The Witness: I do not know it, only from hearsay.

By Mr. Bowman:

Q. From whom did you hear it?

A. All that I ever heard anything about it was from Mr. Kilburn, and I will here say now, right here, that Mr. Kilburn told me, when he returned from Washington, that, in effect, there was no assignment made; that the paper was placed in Mr. Mason's hand for him to keep in trust, and that it would be no assignment until it was delivered. That is what I always understood.

288 Q. When you first refused to pay Mr. Everitt his royalty, on what ground did you refuse?

A. I do not remember.

Q. Why did you not pay him, then, without any trouble?

A. I think there was a time when we refused him for a short time

on account of the number 10 and 11 beds, which were not a part of his patent, and we thought we ought not to pay a royalty on them; but afterwards we did allow it, to save trouble.

Q. But I refer to the last refusal, on May 10th, 1878.

A. That was on account of this Stark patent, and also the Maine patents.

Q. When did you first learn of Stark?

A. It was in the early part of February, 1878.

Q. Who brought him to your notice?

A. My brother, J. Warren Hale.

Q. I understand you to say you withheld Mr. Everitt's money on account of the suit commenced against you by Stark; is that it?

A. I think the suit had not been commenced then. It was on account of the Stark patent. We were trying all the time to make some arrangement with Mr. Everitt.

Q. You had received a note from Mr. Mason threatening suit by Stark, had you not?

A. Yes, sir.

Q. And then you notified Mr. Everitt of this threatened suit?

A. Yes, sir; showed him the letter the very day it was received.

Q. Your firm had paid for the Stark patent at that time, had they not?

A. Paid for a portion of it. I do not think we had paid for all of it.

Q. And Mr. Mason was then your attorney also, was he not?

A. He had that matter in charge; yes, sir.

Q. And on account of that notice from Mr. Mason you then called Mr. Everitt's attention to it, and you stopped paying him royalty?

A. I think we paid him some money after that letter was received.

Q. You are not sure about that, are you?

A. I am very sure, pretty sure of it—after that letter was received.

Q. Did not you claim that you could not settle with him, as you would have to detain the money to await the result of the Stark suit, and he would have to bear his share of the expenses of it?

A. I think I told Mr. Everitt myself that we could not pay him any more in the face of these two patents, the Stark and the Maine patents.

Q. And the suit?

A. No, sir; I did not mention anything about the suit. It was the Stark and the Maine patents that I mentioned at that time.

Q. Who paid the cost of staying the case in the United States court?

A. Of staying it?

Q. Yes, sir; or discontinuing it?

A. I really could not say; I do not know as it has been paid.

Q. You do not know who paid the costs in that suit?

A. No, sir; I do not; I do not know that it has been paid.

Q. I produce and show the order of discontinuance, and containing the following language (the order of discontinuance shown wit-

ness): "It is agreed that the above-entitled case may be dismissed upon the payment of costs by the defendant.—R. Mason, solicitor for plaintiff."

A. I remember now taking that document down to court; but nothing has been as yet paid on it by us. I am positive nothing has been paid by us.

Mr. OTTERSON: The first I knew of that having been discontinued is the production of this paper by Mr. Bowman.

289 Q. Where did you get that paper from?

A. That came from Mr. Mason.

Q. He sent it to you for that purpose, did he?

A. I think so.

Q. Your firm paid Mr. Mason, of course, for his services in the case?

A. I cannot say.

Q. Do not you know?

A. No, sir; I do not.

Adjourned until Monday next, December 29, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *December* 29, 1879.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Henry S. Hale, Mr. J. Warren Hale.

J. WARREN HALE affirmed and examined by Mr. OTTERSON:

Q. You are connected with the Hale and Kilburn Manufacturing Company, are you not?

A. I am.

Q. In what capacity?

A. Secretary.

Q. Do you remember the visit of Mr. Stark to your counting-house?

A. I do.

Q. Do you remember when it was?

A. It was in the early part of February, 1878, along about the first of February.

Q. Had you ever seen Mr. Stark before?

A. Never.

Q. Had you ever heard of him before?

A. No, sir.

Q. Who was there when he came in?

A. I was there alone, in the office, when he came in.

Q. After his visit, upon that occasion, with whom did you communicate first, and how soon afterward?

A. To Mr. Everitt.

Q. How soon after Mr. Stark's visit?

A. He came in the morning, and this was in the afternoon.

Q. What did you tell Mr. Everitt?

A. I told Mr. Everitt that a man named Stark had been there from Topeka, Kansas, and said that our folding-bed was an infringement on his patent.

Q. What reply did he make?

A. Mr. Everitt said, "Pooh! it don't infringe; let him snap his whip—or crack his whip;" or something like that.

Q. Did you hear anything more about the Stark patent, or have anything to say to Mr. Everitt about the Stark patent?

A. No, sir; I did not.

Q. Did you hear any part of the conversation between him and Mr. Kilburn?

A. I heard Mr. Kilburn talking with him frequently about it afterward; every day; that is, when Mr. Everitt was in. I heard Mr. Stark's name mentioned in the conversation. I did not particularly know what was said besides that.

Q. Did you know what they talked about, except that they talked about Stark?

A. I heard Mr. Kilburn ask Mr. Everitt what he was going to do about it. I do not recollect now what reply Mr. Everitt said, because I was in and out all the time in the office.

Cross-examined by Mr. BOWMAN:

Q. Did you have anything to do with the purchase of the Stark and Maine patents?

A. No, sir; I did not.

Q. Who attended to that part of the business?

A. Mr. Kilburn.

Q. Do you know, of your own knowledge, when these patents were purchased by your firm?

A. Which one do you mean?

Q. The Maine and Stark patents, or either of them.

A. Well, the Stark patent, I suppose, was purchased the last of February, but I did not see any assignment of any such thing of it.

290 Q. In February of what year?

A. In 1878.

Q. Do you know when the assignment was made to your firm?

(Objected to by Mr. Otterson, because the assignment is in evidence and speaks for itself.)

A. The first assignment I ever saw in December; I think the 28th of December; along about the first of January, 1879.

Q. My question was: When was the assignment executed, if you know?

A. That I do not know. I never saw it, except that one, in 1878. I do not know of any other.

Q. Did you know anything about the suit which was brought in the United States circuit court by Stark against your firm?

A. No, sir; only by hearsay.

Q. You know the company paid for the Stark patent, do you not?

A. I suppose they did; that is, I saw a due bill.
Q. That due bill was paid, was it *it* not?
A. Yes, sir.
Q. When was that paid?
A. It was paid along at different times.
Q. Well, what time?
A. I cannot tell you.
Q. Was it prior to November, 1878?
A. Yes, sir.
Q. Was the last due bill for the Stark patent paid prior to November 1878?
A. I know of only one due bill.
Q. You know of only one due bill?
A. Yes, sir.
Q. Was that the only one given in payment of this patent?
A. To my knowledge.
Q. And that was paid in full prior to November, 1878?
A. I think so; yes, sir.
Q. Then you knew prior to November, 1878, that the patent belonged to your firm?
A. I did not know it belonged to our concern wholly.
Q. Did not you feel as certain of that as you do now of anything you have in this world?
A. I thought it was held by Col. Mason in escrow.
Q. Why did you suppose anything of that kind?
A. Only from hearsay.
Q. Who did you ever hear say that Colonel Mason held it in escrow?
A. Mr. Kilburn.
Q. Which one?
A. Cheney Kilburn.
Q. That was since this suit here—within a few weeks or months?
A. No, sir.
Q. Do you mean to say that you understood that Stark assigned it in escrow for your firm?
A. Please repeat that question.
Q. Do you mean to say that you understood that Stark assigned that patent to Mr. Mason to be held in escrow for your firm?
A. I mean to say that it was assigned to Colonel Mason to be held in escrow.
Q. For whom?
A. For our benefit.
Q. Was not Colonel Mason your attorney.
A. Yes, sir; that is, as far as my knowledge goes. I do not know anything. I had nothing to do with Colonel Mason at all.
Q. You knew he was counsel for your firm in this matter, did you not?
A. I suppose so.
Q. You suppose so; that is, you have seen nothing done in consultation about this very matter?
A. Not to my knowledge.

Q. Do not you know that the money of your firm paid him for his services in this matter?

A. No, sir, I do not.

291 Q. I will go back. Did not you know, prior to November, 1878, that your firm had the full and absolute title to the Stark patent?

A. No, sir; I did not.

Mr. OTTERSON: I wish the master to note that the evidence is to the contrary, and that it is evidence offered by the other side.

Mr. BOWMAN (to Mr. Otterson): I do not want to contradict you; but I am going by the record.

Mr. OTTERSON: I do not think it is fair to put the question to the witness in that form.

Mr. BOWMAN: I am going by the record.

Mr. OTTERSON: You are going contrary to the record.

Mr. BOWMAN: I hold your answer in my hand for that.

Mr. OTTERSON: Then it is all right. I stand by the answer.

By Mr. BOWMAN:

Q. Did you ever consult with Mr. Mason about this patent?

A. No, sir.

Q. Or the Stark patent?

A. No, sir.

Q. And you did not know that he held the assignment for your benefit?

A. By hearsay.

Q. That is, you heard Mr. Cheney Kilburn say so?

A. You did not pay your money for the patent without knowing that it was yours, or was subject to your control, did you?

A. I suppose it was subject to our control.

Q. Who paid the money?

A. The firm.

Q. You are one of them, are you not?

A. Yes, sir; the Hale & Kilburn Manufacturing Company.

Q. Who paid it to Stark for the firm?

A. It was paid at different times; I cannot tell you. The Hale & Kilburn Manufacturing Company paid it. I might have given Mr. Stark fifty dollars, and Harry might have given him fifty dollars, and some one else might have given him fifty dollars.

Q. If you knew and felt certain that this patent belonged to your firm, and your firm had control of it, before and after you paid for it, why did your firm get Stark, after you had purchased the patent, to bring suit against you for infringing against his patent, when the patent, in point of fact, belonged to your firm?

A. That was in the hands of Colonel Mason.

Q. Did Colonel Mason do that without any direction from you or your firm?

A. Without any direction from me.

Q. And you say without any from your firm, or any member thereof?

A. That I cannot say, because I did not hear that.

Q. Did you not know that that was an arrangement entered into on the part of your firm for the purpose of getting Mr. Everitt to make some allowance to your firm or some reduction in the amount his royalty?

A. I know that we tried—at least I did not; I did not have anything to do with it—but by hearsay I know that we tried to have Mr. Everitt do something.

Q. That is, you wanted him in that suit to allow Mr. Stark five-sevenths of his royalty, did you not?

A. That I know nothing of.

Q. That you knew nothing of?

A. No.

Q. Did you never hear it from your firm, or the members of it?

A. No, sir.

Q. You never heard it spoken of by any one?

A. No, sir.

Q. Well, that suit was afterwards stopped at the direction of your firm, was it not?

A. That I know nothing of.

Q. But you do know that when that suit was brought Stark
292 had no interest in his patent—you had bought it and paid for it long ago?

A. That was under the advice of Col. R. Mason.

Q. What was?

A. The suit.

Q. Why was Mr. Mason to do that; what was it for?

A. I do not know; I had no conversation with him.

Q. It was not to benefit Mr. Everitt, was it?

A. That I know nothing of.

Q. That you knew nothing of?

A. No, sir; only by hearsay, that there was a suit started; that was all.

Q. Who did you hear say this?

A. I might have heard my brother, I might have heard Cheney Kilburn; that I could not say.

Q. If you owned that patent at the time which you have stated, and had control of it, why did you swear in your answer that you had not the control over it, and had not the assignment of it?

A. I did not know that we owned it—always understood that we did not—when it was held in escrow by Colonel R. Mason.

Q. Did not you know that it was assigned to your firm, and that your attorney, Colonel Mason, simply held it to keep it from record, in order that Mr. Everitt might not find it out?

A. I did not know it was assigned; I never saw any assignment until December 28, 1878, or along about the first of January, 1879.

Q. Then, previous to your assignment, you believed that you owned it outright?

A. No, sir.

Q. When you pay for a thing, and give full value according to

agreement, do not you consider that the thing paid for belongs to you?

A. When the thing was held in that shape I did not know it belonged to the concern.

Q. Do you mean to say, as a business man, that when your firm paid full value and consideration for that patent you did not know it belonged to your firm?

A. I do; most assuredly.

Q. Is that your habit of doing business?

(Objected to by Mr. Otterson.)

A. We do not always do business in that way.

Q. And you do not always purchase things in that way?

A. No, sir.

Q. Will you explain why you did it in this case?

A. I did not have anything to do about purchasing this.

Q. How long have you been a member of this firm?

A. This firm has changed, you know?

Q. Yes, sir; from a firm to a corporation.

A. Yes, sir. I have been there eleven years; that is, from the old concern to the new one.

Q. What branch of business do you attend to?

A. General; looking after the things in general.

Q. Have you anything to do with the books?

A. No, sir; not particularly with the books.

Q. You hold the position of secretary, I believe?

A. Yes, sir.

Q. Do you do all the correspondence?

A. No, sir.

Q. Some of it?

A. Some; yes, sir.

Q. Did you ever correspond with Mr. Stark, in Kansas?

A. No, sir.

Q. At no time?

A. No, sir.

Q. Nor anywhere else?

A. No, sir.

Q. Do you remember seeing Mr. Everitt shortly after Mr. Stark saw you at your store?

A. I do.

293 Q. Do you remember Mr. Everitt saying to you that he would like to see Stark, and that you said he had gone to Washington, and when he returned you would tell him that Everitt wanted to see him?

A. No, sir; I remember no such thing.

Q. What did Mr. Everitt say to you on that occasion?

A. He said "Pooh! it don't infringe; and let him snap his whip, or crack his whip," or something like that.

Q. Was that the only time you saw Mr. Everitt?

A. It was the only time I saw Mr. Everitt to talk with him about

that thing, because Mr. Kilburn had all the conversation with him about it.

Q. When Mr. Stark came back from Washington how long was he in Philadelphia?

A. I do not know; he was here some time.

Q. At your store, every day?

A. In and out; I cannot say every day.

Q. During the time he was here did you notify Mr. Everitt that he was here?

A. That I cannot say.

Q. You did not; did you?

A. I do not remember ever notifying Mr. Everitt that Stark was here.

Q. Did you ever tell Everitt that Stark was here?

A. No, sir.

Q. When Mr. Stark came back from Washington did you tell Mr. Everitt that Mr. Stark was here as his antagonist in this business?

A. No, sir.

Q. Then you gave no notice to Mr. Everitt that Mr. Stark was here trying to get his interest in this business?

A. I had nothing to do with it.

Q. Did you see Mr. Everitt at all, or have any communication with Mr. Everitt about Mr. Stark's being here, or give Mr. Everitt an opportunity to see Stark and consult with him about his interest in this patent?

A. No, sir; Mr. Kilburn always saw Stark; it was his business to attend to that.

Re-examined by Mr. OTTERSON:

Q. I understand you to say, in your direct examination, that on the same day that Stark came to your counting-house, in the after part of the day, Mr. Everitt came in and told him that Mr. Stark had been there?

A. When I answered that before I meant after Mr. Stark came back from Washington.

JOHN L. KITE affirmed and examined by Mr. OTTERSON:

Q. What is your business?

A. I am a mechanical engineer, machinest, and expert in patent cases.

Q. Have you examined the letters patent with reference to these several beds—the Maine, the Stark, and the Everitt—in conjunction with the models that are here in evidence?

A. I have.

Q. What is there in the Everitt patent that it not covered by the Maine and the Stark?

A. As far as I understand them there are two points in the Everitt patent which are not covered by the patents of Stark and Maine.

Mr. BOWMAN (to Mr. Otterson): Do you call this witness as an expert?

Mr. OTTERSON: Yes, sir. (To the witness): I understood you to say that you were an expert in patent cases.

The WITNESS: Yes, sir; in patent cases.

Mr. BOWMAN: I object to this witness being examined on this subject.

By Mr. OTTERSON:

Q. What has been your connection with patent cases heretofore?
A. I have been a witness in suits for infringement.
Q. Have you been an examiner of patents?
A. I am a patentee and inventor, and familiar with the wordings and description of patents and drawings.
294 Q. You have examined these models and drawings, have you?
A. I have.
Q. You were about to state the two points.

Mr. BOWMAN: I object to this witness. I do not think he is an expert in a legal sense any more than any other machinist or mechanic, and, in addition to that, I do not think this is a material or proper question for inquiry here.

By Mr. OTTERSON:

Q. Go on and state the two points of difference.
A. The two points of difference which I noticed as being in the Everitt patent and not contained in the other two named are the use of the counterbalancing weights and the projection of the brackets on the foot board above the end of the bed frame when closed.
Q. Do you understand the counterbalancing weights to be one of the claims of the Everitt patent?
A. No, sir; not in the claim. It is not claimed as such.
Q. Then it is not in the patent, is it?
A. It is described and shown in the drawings, I believe. It is not specially claimed.
Q. Is it protected by patent—are the counterbalancing weights protected by patent?
A. There is no claim made for the use of that weight.
Q. But there is a claim, however, for the brackets?
A. That is included in one of the claims.
Q. The brackets?
A. The brackets? Yes, sir; extending above the head of the bed frame.
Q. Well, do not the letters cover the brackets, and do they cover the counterbalancing weights?
A. The letters are used in referring to these brackets, but I think not in reference to the weights.

Cross-examined by Mr. BOWMAN:

Q. What is your residence?
A. 2806 Poplar street.
Q. What is your business?
A. I am at present a consulting engineer and mechanic.
Q. Have you a place of business?
A. No office except in my house.
Q. Not employed at any place?
A. No, sir.

Mr. OTTERSON: We rest.

Adjourned until Tuesday, January 6, 1879, at 3 p. m.

PHILADELPHIA, MONDAY, *January* 5, 1880.

Parties met at the office of the master.
Present: The master, Mr. Bowman, Mr. Everitt.
On account of the absence of Mr. Otterson, adjourned until Thursday next, January 8, 1880, at 3 p. m.

PHILADELPHIA, THURSDAY, *January* 8, 1880.

Parties met at the office of the master.
Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson.
On account of the absence of a witness, adjourned until Monday next, January 12, 1880, at 3 p. m.

PHILADELPHIA, MONDAY, *January* 12, 1880.

Parties met at the office of the master.
Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Henry S. Hale.

Mr. OTTERSON (to Mr. Bowman): I desire to examine one more witness on the subject of this patent, and, as it will not take much time, I suppose you will not object.
Mr. BOWMAN: It may be proper for me to say that at the last meeting Mr. Otterson announced that he had closed his case, but during the time intervening between then and now he stated to me that he had an expert whom he wished to call, which would take but a few minutes, and I told him that personally I had no
295 objection to his doing so. I think it, however, ought to be distinctly understood that the case is not to be reopened for the defence and a number of witnesses called.

Mr. MITCHELL (to Mr. Otterson): Have you any other witnesses you desire to call?
Mr. OTTERSON: No, sir.
Mr. MITCHELL: Then I think you ought to be allowed to call this witness.

RUDOLPH MELVILLE HUNTER sworn and examined by Mr. OTTERSON:

Q. What is your business?

A. I am a consulting engineer, expert, and solicitor of American and foreign patents.

Q. You are a graduate of what school?

A. Of the Polytechnic, in this city.

Q. Have you been engaged in patent cases and the examination of patents?

A. I have.

Q. In what capacity?

A. As an expert.

Q. State if you have examined the patents and the models in this case?

A. I have.

Mr. MITCHELL (to Mr. Otterson): I would like to cross-examine the witness as to his claim to being an expert in this matter, before you with his examination as to the merits of the invention.

Mr. OTTERSON: I have no objection.

By Mr. MITCHELL:

Q. When did you graduate at the polytechnic school?

A. I received my diploma in the summer of 1878; but I was in practice, as an engineer, for about six years before.

Q. Have you ever been called as an expert in a patent case?

A. I have; many a time.

Q. To what special branch of art or science have you devoted yourself?

A. Engineering; construction of machinery; or any patentable article.

Q. When you say "patentable," you really do not mean to go to machinery, do you?

A. I do.

Q. Are you an expert in chemistry?

A. To a certain extent; but I do not practice as such.

Q. And in medicine?

A. I understand medicine to a certain extent, but I would not practice as an expert in such a case.

Q. And electricity?

A. Yes, sir; to a certain extent my profession as an engineer requires me to understand those branches, and I have studied all of them.

Q. What special knowledge have you of the manufacture of furniture?

A. None, excepting that which any patent solicitor and engineer would have to have, if called into an examination, to take out patents upon the same, or seeing them in public use and observing their construction.

Q. I mean what special opportunity have you had to learn the construction of furniture?

A. None but my observation.

Q. Has that been any specially instructed observation?

A. It has.

Q. Where did you get that special instruction in the manufacture of furniture?

A. Do you mean, by instruction, going into a manufactory and examining each operation specially?

Q. I mean all the entire means of becoming specially informed and expert upon the manufacture of furniture?

A. I have observed some of the operation of the construction of furniture after it has been put before the public.

Q. Have you had any special instruction in that matter?

A. I am not a cabinet-maker.

296 Q. But have you had any special instruction in the manufacture of furniture?

A. No, sir; I never served as an apprentice to a cabinet-maker.

Q. Being a cabinet-maker and having served as an apprentice to a cabinet-maker are only two methods of gaining special information in regard to the manufacture of furniture. My question was whether you had any special instruction at all.

A. I have not had any special instruction.

Mr. MITCHELL: I object to the witness as an expert in this case.

By Mr. OTTERSON:

Q. Go on, and state whether you have examined the models that have been offered in evidence here, and whether you have examined the several patents, and state what there is that is novel in the Everitt patent.

A. I have examined the models and also the patents. Have you the patents here?

Q. Yes, sir. (The patents produced by Mr. Otterson and handed to the witness.)

(Mr. Mitchell objects, as the testimony is not relevant to any issue before the master.)

A. I have examined the patent to Everitt, which contains two claims, the first only of which has any novelty, and that being the combining a hinged foot board, lettered "E" in his patent, with several other parts, which are all old.

Q. The hinged foot board is not new?

A. No, sir; the novelty is the combining of that hinged foot board with these old parts. The combination is novel, but of no value.

Q. What is it combined with?

A. The hinged foot board "E" is combined with a head board, a base board, side rails, and a moveable bottom board. I have used the wrong expression in speaking of this claim. I meant removable bottom board, instead of the foot board "E."

Q. That is the combination. Have you examined the model made under the Everitt patent?

A. I have.

Q. Does the model show that combination as in use by the defendants?

A. Not to my knowledge it does.

Q. Do you understand my question? My impression was the other way. I asked the question whether the model shows the combination that you refer to, the novel combination, as in use by the defendants.

A. I mistook the question. The removable footboard is not used in the bed as built by the defendants, but is shown in the model.

Q. Is any part of that novelty in the Everitt patent used in the defendants' manufacture?

A. It is not.

Cross-examined by Mr. MITCHELL:

Q. Where is your office?

A. 901 Walnut St.

Q. Are you alone?

A. I am alone, with my clerks.

Q. Did you ever see the defendants manufacture these beds?

A. I have seen the beds after they have been manufactured.

Q. Where?

A. At their warehouse.

Q. When?

A. Last week.

Q. When were those beds made?

A. I am not aware as to the date of their manufacture.

Q. Were you informed by the defendants that those were made recently?

A. No.

Q. Were you not informed when they were made?

A. No, sir.

297 Q. You said that one of these points that Mr. Everitt claimed for his patent was new, but of no value. What do you mean by saying it was of no value?

A. Because no one would wish to use it.

Q. How do you know?

A. Common sense.

Q. You have had no experience in the manufacture of furniture, you say?

A. But I have had experience in using it.

Q. Have you used the Everitt bed?

A. No, sir; I have not.

Q. What experience have you had in using it?

A. I know plenty who do, and have examined them, and understand their construction perfectly.

Q. Then you have not had any experience, yourself, in using it?

A. No, sir; I do not use it.

Q. Who told you it was of no value?

A. No one.

Q. Then how do you know it was of no value, if you have not used it yourself, and know no one who has?

A. As I told you before—common sense.

Q. Whom do you know who uses the Everitt bed?

A. I know people who use these folding beds, which are all con-

structed substantially the same so far as the main features are concerned; and in no case did any one wish to remove the bottom board for any pretence whatever.

Q. Who are the people you are speaking about; name one of them?

A. Some of which are the Hardings; the sons of George Harding, the attorney, at Ninth and Walnut.

Q. Where do they have these beds?

A. At their residence.

Q. Did you see them there?

A. I have.

Q. Were they Everitt beds?

A. They may not have been Everitt beds in exact construction, yet the broad principle in all these folding beds is the same.

Q. Who else told you that this was of no value?

A. Nobody.

Q. No one else?

A. No, sir.

Q. Then you never used a bed yourself, and you do not know anybody who did, but young Mr. Harding, who used one?

A. There are two Mr. Hardings.

Q. Two; and that is all you know?

A. That is all I know.

Q. You have never used one yourself, and know no one who has used it, to whom you have spoken about it, except the young Mr. Harding; is not that so?

A. No, sir; it is not.

Q. Who else has used them?

A. I cannot tell whether I gave you name for name.

Q. I do not want you to do that. I want you to give me one more.

A. Webster.

Q. Who is he?

A. Petroleum manufacturer in this city.

Q. Where does he live?

A. He is a petroleum refiner; 1724 Spruce street.

Q. Has he an Everitt bed?

A. Not now.

Q. Did he have one?

A. I do not know as it was an Everitt bed. He had a folding bed.

Q. What did he tell you about it?

A. That it did not require any such thing as a bed which would take out the bottom.

Q. Did you see the bed which he had?

A. No; I did not.

Q. When did he tell you so?

A. Recently.

298 Q. Say when.

A. I cannot give you the date.

Q. Within a month?

A. Within a month.
Q. How did you come to ask him about it?
A. Merely talking about folding beds.
Q. And is that all the opportunity you have had for observation?
A. I cannot say that it is.
Q. Well, can you name any other person?
A. I am not ready to name other persons.
Q. You are not ready to name other persons?
A. No, sir.
Q. You said there were two claims in the Everitt patent?
A. I said there were.
Q. You said there were two claims in Mr. Everitt's patent, only one of which was new?
A. Yes, sir.
Q. What special information or experience have you had about folding beds in the past?
A. You are asking your original question. I have answered that before.
Q. Kindly answer it again. Have you studied up the subject of folding beds?
A. So far as my business required.
Q. How far was that?
A. It is pretty hard to state.
Q. Then tell me how far you have studied up the subject of folding beds; do you know when the first folding bed was made?
A. About 1860, anyway.
Q. 1860?
A. 1860, I suppose.
Q. Were there any folding beds before then?
A. None that I know of that operated in this manner.
Q. In any manner?
A. Yes, sir; I think *they* were.
Q. What were they?
A. Beds which folded up with the legs standing out merely to give room.
Q. When was the first folding bed made?
A. I am not prepared to answer that.
Q. Have you made any special study of this question, at all?
A. So far as this patent is concerned, I have.
Q. And you are not able to state when the first folding bed was made?
A. No, sir; I am not.
Q. How, then, did you know about the other claim of Mr. Everitt; what is the other claim?
A. It is a combination of a hinged foot board, with the side brackets raised above the side rails as shown, and forming, when the bed is lifted, the side guards for pillows and bed clothing, as and for the purpose specified.
Q. How do you know that that is not new?
A. Because, in my estimation, it is anticipated by Stark.
Q. You have examined Stark's patent?

A. I have examined Stark's patent.

Q. And there is nothing in this second specification of Mr. Everitt that is included in Mr. Stark's?

A. There is the side brackets extended, but to use them as he constructs his bed would be to infringe the patent of Mr. Stark.

Q. Is not it new?

A. What?

Q. Is it in Stark's patent to use the side brackets that way?

A. The extended side brackets are not, but they form the moulding around the top of the bed.

Q. Where do you find these extended brackets before Everitt's time?

A. In Stark's patent.

Q. You have just said that they were not in Stark's patent.

A. The extended side brackets?

Q. Yes, sir.

A. I do not find them anywhere.

299 Q. Then why is not that new?

A. If you choose to call it new; it is valuless.

Q. I am not an expert; I am asking you. It is not what I choose to call it. You are the expert, and under examination; is it new, or not?

A. Putting the brackets in the form of a moulding around the bed is not new.

Q. That is not what I asked you. I asked you about the extended side brackets; is not that new?

A. I do not know. The extended side brackets form such a moulding, and this moulding is claimed by Stark; hence Everitt's use of it is merely a double use, which does not make it new or patentable.

Q. But you said a moment ago that the use of these side brackets is described by Mr. Everitt in his patent, and was not in Stark's patent, did you not?

A. The special use of extended sides, or side brackets is not claimed or shown in Stark's patent; but Stark's claim is sufficient to cover such extended brackets, for he puts them under the name of moulding.

Q. Has he put them under the name of moulding?

A. He has.

Q. Then I understand you to say now that the extended side brackets are in Stark's patent.

A. The extended sides are; but he has not extended them sufficiently to call them side brackets, as indicated in Everitt's patent.

Q. Kindly say definitely whether they are in Stark's patent, or whether they are not. The extended side brackets—are they in Stark's patent, or are they not?

A. The extended side brackets are not shown in Stark's patent, but the bracket itself is shown, only of inferior dimensions, which, if extended sufficiently high, would form the side brackets shown in Everitt's patent.

Q. You lead me one question further: Are the side brackets extended sufficiently high in Stark's patent?

A. For what?

Q. To be the same thing as Mr. Everitt has claimed for.

A. I do not quite get your meaning.

Q. I am trying to use your language, as far as possible, although I confess I do not entirely understand it, but that may be my own fault. Are the side brackets in Mr. Stark's patent extended sufficiently high to be the same thing that is claimed by Mr. Everitt?

A. Side brackets are side brackets, whether they are ten feet long or two inches.

Q. Kindly answer the question I have asked.

A. I have answered it.

Q. Have you anything more to say in answer to it?

A. I have nothing more to say in answer to it; do you wish that answered again?

Q. I would like to have an answer to it. I do not know that it has been answered before; I do not want it answered again, but I do want it answered now for the first time.

A. Mr. Stark's side brackets and Mr. Everitt's side brackets are one and the same thing, the only difference being that one makes them about twice the depth as the other.

Re-examined by Mr. OTTERSON:

Q. Then I understand you to say that the principle of the Everitt side bracket is precisely the same as the moulding in the Stark patent. In the one it is called a moulding, and the other a side bracket; is that so?

A. It is.

Q. But the principle is the same?

A. The principle is precisely the same, though in Everitt's case he merely puts pillows and clothing behind to give it another name.

Mr. OTTERSON: Now we close.

300 *Plaintiff's Rebuttal Evidence.*

ASHER B. STEVENS sworn and examined by Mr. BOWMAN.

Q. Do you know the defendants?

A. The Hale & Kilburn Manufacturing Company?

Q. Yes, sir.

A. Yes, sir.

Q. Do you know the gentlemen who compose that corporation?

A. I believe that Cheney Kilburn is the president; Henry S. Hale is the secretary; J. Warren Hale, or Warren Hale, I am not sure which, is the treasurer; and I believe that there are some stockholders whom I know, although I do not know all; I think Mr. Newcombe and Mr. Folger are stockholders, and Mr. Artemus Kilburn; I do not know that I am acquainted with any others.

Q. Who did you say was treasurer?

A. I think it is Warren Hale or J. Warren Hale, I am not sure which.

Q. Have you had any personal acquaintance with any of these gentlemen; and, if so, state which of them?

A. I have had personal acquaintance with all these parties that I have mentioned.

Q. When did you first become acquainted with them?

A. In the year 1875; the 28th day of October, in the year 1875; I came into Philadelphia with a chair and exhibited to Mr. Cheney Kilburn, in the office of Kilburn & Gates, which was then on Market street.

Q. Did you ever have any connection with them in reference to the Everitt bedstead and its improvements?

A. Yes, sir; the connection commenced, indirectly, at that time; I made a contract with Mr. Kilburn to perfect certain inventions; I had several plans and made a contract to perfect the invention there; that contract provided that I should perfect the inventions.

By Mr. OTTERSON:

Q. Was that in writing?

A. Yes, sir.

Mr. OTTERSON: Then stop where you are.

By Mr. BOWMAN:

Q. Where is that contract?

A. The contract was brought up, and I delivered my copy over to the company before I left, in 1878.

Q. Then whatever contract or papers there may be connected with it the company have?

A. Yes, sir.

Q. The defendants?

A. Yes, sir.

Mr. BOWMAN: Now, I ask where those papers are?

Mr. OTTERSON: You have had them here, and they have been offered in evidence.

The WITNESS: I do not think that contract has been offered in evidence—you have had no means of knowing about it.

Mr. OTTERSON: (To the witness.) I do not want you to state what has transpired here, you do not know what has been offered in evidence here, because you have not been here to know.

The WITNESS: Perhaps I can clear that up; I have read all the evidence.

Mr. OTTERSON: At whose instance was that?

Mr. MITCHELL: I will answer that question; it was by my instruction.

By Mr. BOWMAN:

Q. I am asking you about your relations with these defendants in connection with the Everitt bedstead and improvements, and you were proceeding to state about your having a contract with them in relation to the Everitt bedstead.

301 A. Yes, sir; this was a general contract in relation to all improvements, that I was bound to sign over to them every-

thing, and I went to work at the chair and perfected that, and another contract was drawn; this general contract provided that when the invention was perfected——

Mr. OTTERSON: I object to the witness speaking here, in oral evidence, of papers that are in writing.

By Mr. BOWMAN:

Q. You are speaking of a writing, are you?
A. Yes, sir.
Q. Where is that writing?
A. It is in the hands of the defendants. At least it was there when I last saw it.

Mr. BOWMAN (to Mr. Otterson): Unless you produce it, I will ask the witness to state its contents.

Mr. OTTERSON: Put your request in shape to have it produced, and it will be produced; but it has been produced before the master, and marked, and put in evidence.

The WITNESS: The contract I speak of is a general contract, and has in it an understanding, whenever any invention was perfected, what royalty was to be paid.

By Mr. BOWMAN:

Q. What relation had that to the Everitt bedstead?
A. Only in this way: That I was bound to turn over to the company anything that I got up in the factory, if desired.
Q. Did the company desire you to turn over to them anything in relation to the Everitt bedstead? If so, state what that employment was and all about it.
A. In the summer of 1877 Mr. Cheney Kilburn came into my room. At that time work was very dull, and we got [to] speaking about the bed, and I told him I thought I could get up a bed that would be different from anything that they had, and he told me, said he, "Go on, if you can." Said he, "We are paying a heavy royalty on this bed, and if you can get up a new one we would like to have it. And," said he, "the gentleman who does our sawing for us will saw out the necessary lumber for you."
Q. What bed are you speaking of?
A. The folding bed.
Q. Whose folding bed? You are speaking of a folding bed upon which they were paying royalty; whose bed was it?
A. Mr. Everitt's bed.

By Mr. OTTERSON:

Q. Did you say Mr. Kilburn said it was Mr. Everitt's bed?
A. I did not say that Mr. Kilburn said so.

By Mr. BOWMAN:

Q. Go on, and state all that was said in that conversation?
A. Mr. Kilburn said they were paying Mr. Everitt a very heavy royalty, and if they got anything that was good they would be glad

to manufacture it. At that time I had not my patent reports, so as to investigate the case, and I had no copy of Everitt's patent, and Mr. Kilburn said it would be no use for me to work on that form of bed, as they had had an opinion from two lawyers in the city, naming one of them (a Mr. Harding), that the patent was all right and valid, and that I had better work in an entirely different direction. So I adopted a different class of folding bed at that time, and made a good many models upon them of different styles, and they did not seem to meet his approbation, and I gave it up. Work then commenced in the fall, and I gave up the experiment. In the winter of 1877–78, after Christmas, my work became short again, and meantime I had received my patent reports and got hold of the claim of Everitt's patent; and I also found that there had been folding beds made, and so I made up my mind that I could get up one that would be new, so far as the features of Mr. Everitt's patent was concerned, and I so told Mr. Kilburn, and he told me to go on with the experiments, and I immediately went out into the shop and formulated my idea in a very short time, and came in with it, and it struck him favorably, and then I asked him what he would give me if I succeeded, and he said, "What would you want?" Said I, "You know I am not very high in my price; if you will give me a dollar on each bed that is made, and fifty cents on each crib, I will
302 undertake the matter." Mr. Kilburn said he would do it, and I went to work then and I prepared a model, and I exhibited it to Mr. Kilburn and Mr. Newcombe, to Mr. Henry S. Hale and Mr. Warren Hale, and it seemed to meet their approbation, and so they told me to see their attorney. This was Mr. Mason, in Washington, and Mr. Kilburn told me I had better see him and lay the matter before him, and let him decide that it was all right. So I got ready. Meantime, in these forms, I agreed that if I did not succeed it should not cost them anything; that I should do it all at my own expense.

In this first agreement I was to have two dollars and a half a day all the time I was experimenting, but I told them that in this case, as it was a matter that they were selling, I would release this agreement of two dollars and fifty cents a day, and if I did not succeed it should not cost them anything but the lumber and the use of the shop. I got ready and went down to Washington. Mr. Mason, the attorney, was not at home. Mr. Holloway, the ex-Commissioner of Patents, told me——

(Any statement of Mr. Holloway objected to by Mr. Otterson.)

Q. State anything that was said by these defendants, or by their representative in Washington, that you can state, but do not state anything else.

A. Well, I do not know as I understand exactly.

Q. Well, any conversation on the part of the parties I have specified.

A. Mr. Mason was away then, and Mr. Holloway informed me he was in New York city, and I might go back, and they would telegraph to him to meet me here in Philadelphia. That was done; they

telegraphed, and then the company received a telegraph, which was sent up to me, that Mr. Mason would meet me at the Pennsylvania railroad depot on a certain train. I met him there and got into the car with him and took him down to the store on Sixth street.

Q. What store?

A. The store of the Hale & Kilburn Manufacturing Company.

Q. Go on with your narrative.

A. Mr. Kilburn and Mr. Hale—or Henry S. Hale, more particularly, Warren came in once or twice—and myself got down and exhibited the models to him; and meantime I had looked up in my reports certain patents which had a bearing on the subject, and among them was one by Mr. Thistle, which I thought would have a bearing on this case. We canvassed the matter, and Mr. Mason said there was no question but my model would meet the requirements of the case, as it was entirely devoid of the claims of Mr. Everitt's patent. They then took Mr. Mason in charge and showed him the beds, how they worked, and took him up through the factory. He had to take the train at a certain time, and when they got through I took him to Wannamaker's saloon and gave him his dinner, and took him to the depot at my own expense, and he went on. His decision was so favorable that I was encouraged to go on, and I soon struck a still better improvement; but in the course of my investigations I found Mr. Stark's patent, and I told Mr. Kilburn that that was the patent that was at the bottom, or the first patent in this class of folding beds. I was well satisfied of it, although in the cuts we could not tell exactly, as they only showed one drawing——

Q. Never mind that; when did you discover the Stark patent?

A. It was in January.

Q. Of what year?

A. Of the year 1878.

Q. That you discovered it?

A. I discovered it in my examinations, and I exhibited it to Mr. Kilburn. I exhibited it to Mr. Hale and asked him why in the world they did not buy the patent in the store, and Mr. Hale said they did not think the bed business at the time they commenced it would reach the magnitude it had. He said they knew of the patent, and had talked it over with Mr. Howson, but they did not know the bed business would reach the magnitude it had since reached, and they did not think it of importance enough to buy. Then
303 Mr. Kilburn told me to write to the postmaster of Topeka, Kansas, and see if Mr. Stark lived there. So I wrote to the postmaster, and soon received a reply that Mr. Stark did live there. Then we changed our bargain. I also found in the investigation that the Maine patents, too, had a bearing——

Mr. OTTERSON (to the witness): I would like to have the correspondence you have just referred to produced.

The WITNESS: I could not produce it; I did not preserve them; I did not know it would be of any importance; I never expected a suit about it.

By Mr. BOWMAN:

Q. You say Mr. Kilburn first told you to write to the postmaster at Topeka, Kansas, to see if Mr. Stark was there?

A. Yes, sir; and we changed our bargain when we found this out, and I was to go to Kansas and purchase the Stark patent.

Q. For whom?

A. For the company.

Q. What company?

A. For the Hale & Kilburn Manufacturing Company, and also the Maine patents, and was to have three per cent. royalty, and Mr. Kilburn agreed to advance all the money to make the purchases, and to take it from the royalty when it came due; and I was making preparations to go and get my models more perfect, and went out through the store, along in the fore part of February, one evening, and Warren Hale came in, and, said he, "Stark is here." Well, I was taken aback some; I did not exactly understand it; and says he, "He has gone on to Washington, and will return in a few days, and he has left a copy of the patent here," and he gave it to me—the copy of the patent. Then I could see it more fully than in the official drawings, and could see the exact bearing it had on the question, and that it could be reissued. Mr. Everitt's patent was not, then, an infringement. Mr. Stark would have to risk the patent going through the Patent Office again, and would have to have it annulled, and would have to swear that it was not worth anything, on account of the failure to produce the claims that should have been produced, and there is a risk in doing that, although it is often done.

Q. You said Mr. Hale told you that Mr. Stark was in the office?

A. He came back in a few days—Stark did—and Mr. Kilburn came in and told me he was back, and he asked, I cannot tell, I think it was $20,000 for his patent. It was either $20,000 or $10,000; but I have forgotten.

Q. Who said that?

A. Mr. Kilburn.

Q. Mr. Cheney Kilburn?

A. Yes, sir.

Q. He said that Stark asked $10,000 or $20,000 for his patent?

A. Yes, sir; and he said, "I poohed at him, and I took him all over the factory, aand I talked him to death almost, and I thought he would be glad to sell for nothing before he got through with it;" but at last he came in. He came in to talk about that matter, from time to time, almost every day, and one day when he came in he said he had closed the trade, and he had agreed to sell it for $1,000. He said, "We must manage this so that Mr. Everitt does not know of it until we get the patent reissued." So they got the papers ready. Mr. Stark made an application for reissue, and, of course, with every application for a reissue you have to make an assignment to the parties to whom it is to run. Mr. Stark completed the assignment, and I was called into the office at evening, at the time I was to take it to Washington, and Henry S. Hale gave me the

papers, and said there was the assignment and the application. I took them and put them in my envelope that I received from Mr. Howson for carrying papers, and took them down.

Q. The assignment was by whom?

A. By Stark to the Hale & Kilburn Manufacturing Company.

304 Q. Direct?

A. Yes, sir; and the application for the patent was to run to the Hale & Kilburn Manufacturing Company.

Q. And who gave you those papers to take down to Washington?

A. Mr. Henry S. Hale gave me the papers when I went out, and Mr. Kilburn was there, and they were talking with me about it. I went to Washington, and arrived in Washington—but previous to that I asked Mr. Kilburn if there was not something in their agreement that would prevent their carrying out their arrangement with me.

Q. What agreement?

A. The agreement between Mr. Everitt and themselves, and he said no; there was nothing in the agreement that would prevent it. And on my arrival at Washington I went into Mr. Mason's office, and Mr. Mason sat at his desk, and I went in with the papers, and and he looked up, and he was writing a document, and as soon as he had completed he turned around and threw it to me, and said he, "Stevens look at that." I took it and saw that it was an agreement between Mr. Everitt and the Hale & Kilburn Manufacturing Company, and when I came to read it over I found this clause in it: That there was no opportunity, no chance, for the Hale & Kilburn Company to be released from that contract, except by a judicial decision; that that patent was an infringement upon some prior patent, and that Mr. Everitt's patent was an infringement upon some prior patent, and when I had read it Mr. Mason said, "You may as well give the thing up." I was greatly disappointed. I had a great deal of hopes. They were selling two or three beds a day, or somewhere in that neighborhood; and even two or three dollars would have been to me quite a little income. Mr. Mason had some business out of the office and left, and I went to look over papers in the office. Finally I went out of the office, and I thought I would go to the depot, and on the way to the depot I happened to think that after all I might go and buy the Stark patent myself, according to our previous agreement, or rather the agreement as it then stood, and then bring a suit against the Hale & Kilburn Manufacturing Company (which would have been legitimate if I owned the Stark patent, and got it reissued, as I knew it was capable of reissue), so as to make Mr. Everitt's bed an infringement of it, and get it reissued, and bring a suit against the Hale & Kilburn Manufacturing Company, and get a judicial decision. I thought they need not have to fight it very hard, unless they had a mind to, and that it would give Mr. Everitt back his patent, and it would not hurt him, but it would give him back his patent, as it was, and give me a chance to make something out of it. I did not go back or say anything to Mr. Mason about it; I wanted to get the train home the first thing, and I started for the depot, took the train, and arrived home, and in the morning at seven o'clock I went to the office, and

found Mr. Hale and Mr. Kilburn and told them my proposition. Says I, "Mr. Mason has this patent and assignment there, and at ten o'clock it will be put on the records, and there will be no going back of it."

Q. That is, you mean the assignment of Stark to the Hale & Kilburn Company?

A. Yes, sir; says I, "Your way is to stop the record. Send a telegram." Immediately the telegram was written, and Mr. Henry S. Hale went out with the telegram to send it.

Q. Who wrote it?

A. Mr. Henry S. Hale wrote the telegram, and went out to send it; at least he went out with it, and said, when he came back, that he had sent it. That stopped the proceedings. Mr. Mason did not put the papers upon record, but a change was agreed upon, and a few days after Mr. Kilburn, Mr. Stark, and I went to Washington. I thought all the while that Mr. Kilburn calculated to fulfill his agreement with me.

Q. What agreement?

A. This agreement that he had made; after I found he had bought the Stark patent we fell back on the old one. Then they were not relieved from the Everitt patent. They wanted to use the foot-board, with the high cornice, and then we went down again, and Mr.
305 Kilburn immediately gave Mr. Mason instructions to change the application so that it would not run to them and make a new assignment, and when it was completed—when the new assignment was completed—you will find now in the records of the office the old application first written in one handwriting, and the front piece of it the title page, so to speak.

Mr. OTTERSON: I object to the witness talking about the characteristics or the contents of written papers without their production.

The WITNESS: You will find enough of it torn off and written in Mr. Mason's handwriting to change the parties to whom it run to—to change it to Mr. Stark. Then the old assignment was taken and put into the stove, and a new assignment made, which Mr. Mason was to held for the company.

Q. Who was present when the old assignment was thrown into the stove?

A. Mr. Holloway, the clerk; Mr. Mason's son, the clerk who makes their drawings, was also present, and myself.

Q. Who else?

A. Mr. Stark and Mr. Kilburn. Mr. Kilburn directed Mr. Mason to do this. Mr. Stark remained over night; Mr. Kilburn and I came home that night.

Q. What next happened?

A. Let me tell the rest. I had a model with me. The reason of my going was, I had a new model, and was to have it decided by Mr. Mason whether it would meet the requirements of the case or not; whether it was all right and patentable, and as soon as I brought the model forth Mr. Mason said it was all right, and Mr.

Kilburn commenced talking against it, and immediately, as soon as Mr. Mason got the cue, he changed his talk, and I saw then that I, too, was to lose my share; that there was some other plan—at least, I was suspicious of it, and somewhat confirmed in my mind; but we came home together. I then asked them to make the agreement. I asked Mr. Kilburn, I asked Mr. Hale, why they did not make this agreement in writing, and put it in writing.

By Mr. MITCHELL:

Q. You mean the agreement with you?

A. Yes, sir; they said they would do it, but it was put off, and, finally, it was not done, and Mr. Kilburn said my bed would not meet the requirements.

By Mr. BOWMAN:

Q. Then you came home with Mr. Kilburn?

A. Yes, sir.

Q. What next took place in relation to the Stark patent in connection with Mr. Everitt; when did you next hear from Mr. Stark?

A. Mr. Stark came back in a few days.

Q. Then what took place?

A. At the time the assignment was made, I have forgotten one feature of it, a due bill was given. They bought another old patent of me which they had thrown out, and were to pay me one hundred dollars for it, and Mr. Kilburn said to me, "We will do with you just as we did with Stark; we will pay you some money to go to Washington, and give you a due bill for the balance, and you can go to Mr. Roberts and draw money whenever you want it." He said that was what was done with Mr. Stark.

Q. Then when did you next see Mr. Stark?

A. A short time afterward he came back.

Q. Where did you next see him?

A. In the store of Hale, Kilburn & Co.

Q. When did you next see Mr. Mason?

A. I found out that I was not going to get anything, and I could not get this agreement that I expected, and I made up my mind to leave them, and I went back to Washington some time afterward.

Q. Before you went to Washington did you see Stark in and out of the defendants' store and place of business?

A. Oh, yes, sir; he was not there very often, but occasionally; he was engaged in some other invention, perfecting it.

306 Q. State whether or not anything was said to you by these defendants, or either of them, cautioning you not to let Mr. Everitt know of Mr. Stark's presence in the city.

A. Mr. Kilburn always cautioned me not to let Mr. Everitt know of it.

Q. Did he state why he did not want Mr. Everitt to know it?

A. I do not remember that he did, only that he said it was better to have the thing all perfected, and have the patent all reissued before anything was said to Mr. Everitt.

Q. Did you ever understand either of these defendants to tell Mr. Everitt that the Stark patent could be purchased for $1,000?

A. No, sir; I never did. I never heard them talk with him.

Q. You say you went back to Washington?

A. Yes, sir.

Q. What did you discover on your return to Washington?

A. Why, I told Mr. Holloway.

(Objected to by Mr. Otterson.)

Q. Who was he?

A. He was Mr. Mason's partner and one of the firm.

Q. And they were employed by the defendants in this matter, were they?

A. Yes, sir.

(Any conversation between Mr. Holloway and the witness objected to by Mr. Otterson.)

Q. State your interview with Mr. Holloway?

A. I told him that I was to lose my share anyhow.

Q. How were you to lose it?

A. That they refused to sign the agreement with me and undoubtedly had adopted another plan. Mr. Mason told me I had better go back and he would write them a letter. I shall have to bring in another trade in this thing. There were two things. I took a model of the bed, and the attachment seal for the chair, and asked Mr. Kilburn there, in the presence of Mr. Holloway and Mr. Mason, if he wanted those matters; if so, he could have them. If he wanted them applied for in the name of the company, and he said, no; he did not want them; and I was trying to get an agreement from them. They had agreed to make an agreement which would stipulate the royalties on the chair, that I should receive half in spite of any other patent which they bought, and it was agreed that this patent was to be put, as the other patents were, one half in my name. But I found, when I came to look at the records, that they were not so put; that it was not in my name, and that I was to lose if they carried out their plan the royalty on the chair; that they had got the Lee patent, as it was called, all in their own name.

Q. Well, you were stating about your interview with Mason after you returned to Washington the next time.

A. He told me to go back and see them. I left not intending to return, but I did return and then we fixed up the agreement on the chair.

Q. Did you come here to Philadelphia?

A. Yes, sir; then I thought I would wait and see their intentions about the bed, whether they would really give me my share or not. I started out and went to travelling for them, selling goods, to have something to do, and a good many failed. It was when the bankrupt act was taking place and a good many of our customers failed, and I lost my share in it. I lost my commissions. I lost a good many goods, and then I went on a trip to Boston, and they had preceded me in the trip and I could not sell any goods. They had

been to almost every customer between here and Boston. Then I took another trip to Washington, and it was almost the case there; and the man in charge of the Baltimore store was very much offended at my selling, as he was going to sell in Washington himself; and I came back and made up my mind to quit, and I went to Boston.

Q. How many times did Mr. Stark accompany Mr. Kilburn to Washington?

A. Only once, that I know of.

Q. Do you know of his having gone to Washington with either of the other defendants?

A. No, sir; he did not go to Washington with either of them, I think. He went down first, as he was passing along, on his
307 own business, as he informed me. He left a copy of the patent and inventions and a notification that they were infringing, and said he would see them when he came back, as I was informed.

Q. Who left that notice?

A. Mr. Stark; he left the copy of the patent.

Q. And what else?

A. A note that he would stop on his return to Philadelphia, and would see them.

Q. With whom did he leave that word?

A. With Mr. Warren Hale, at the store.

Q. When was this?

A. I think that was about the ninth day of February, 1878.

Q. Was that after he had been to Washington with Mr. Kilburn and yourself and fixed up the assignment?

A. Oh, no! That was before, that was when he first appeared.

Q. Where did he stop?

A. At a hotel. I have forgotten the name, down on Fourth Street.

Q. The Merchants' Hotel?

A. The Merchants' Hotel; yes, sir.

Q. Do you know anything about a letter sent by Mason, as the attorney of Stark, to the defendants on April 10, 1878?

A. It was arranged that Mr. Mason should notify the Hale and Kilburn M'f'g Co. that they were infringing Mr. Stark's patent.

Q. It was arranged by whom?

A. By Mr. Kilburn and Mr. Mason; and when the latter came, Mr. Kilburn came in where I was to work, and he says: "Why, what do you think? He has charged $100 for that notification."

Q. Do you remember when the letter came; on what day?

A. I could not tell now; it was some time.

Q. Mr. Kilburn said that Mason had charged $100 for writing the letter or notification?

A. Yes, sir; the notice of the infringement; I do not know, but he said he wrote three copies of it; one directed to a firm in New York, one directed to some firm in Boston, and I think one directed to themselves.

Q. What was it?

A. Notification that they were infringing.

Q. Infringing what?

A. The Stark patent.

Q. What was it that was understood between the defendants and Mason that the object of that note should be?

A. Well, the object then was to get Mr. Everitt to reduce his royalty. That was the plan that I saw they had adopted. They had seen they could throw me over board easier than they could him, and sooner than pay me the royalty, they would let the contract stand with Everitt and get his royalty reduced, and use it as a means for reducing his royalty.

Q. Mason, then, appeared as counsel for Stark in the notice of the infringement?

A. Yes, sir; Mr. Stark did not know anything about this matter, I do not think, because he went on and simply signed the papers, as they wanted him to do, and changed them; but I do not think he knew anything about the matter. He never said anything about it to me. I think he acted in perfect good faith in changing the writings.

Q. Do you know anything about the suit which was brought in the United States circuit court in Stark's name against the defendants?

A. I knew a suit was to be brought, but I did not know anything about when it was to be done. They threw me out of the council then.

Q. How did you know that there was a suit to be brought?

A. It was arranged then, at that time, instead of letting me go on, as it was agreed upon, and let me bring the suit myself, they agreed they would not trust me, I suppose, and they would let Mr. Mason bring it in Mr. Stark's name.

Q. It was arranged by whom that this suit should be brought against them?

A. By Mr. Kilburn, at that time.

308 Q. With whom did he make the arrangement that the suit should be brought?

A. With Mr. Mason.

Q. And what was the object of that suit?

A. It was to scare Mr. Everitt a little and get him to reduce his royalty.

Q. And Mr. Mason was to appear as Stark's attorney?

A. Yes, sir.

Q. Who employed Mason to do this work?

A. Mr. Kilburn.

Q. Do you know about a complaint being made by Mr. Kilburn of Mr. Mason's charges for this work of $100.

A. No complaint, only he spoke of it in his kind of a bluff way. He came in there and, says he, "He has charged us $100 for writing those letters."

Q. Do you know what Mr. Mason's reply to that was?

A. Oh, Mr. Mason did not know he said anything of the kind; he did not say that to Mr. Mason; Mr. Mason was not there; that was a remark he made to me in the shop where I was at work.

Q. What is your business?

A. Well, I have been at work at inventions for awhile—for quite a number of years now.

Q. What are you—a practical worker; are you a mechanic?

A. No, sir; I should not hardly include myself in that category; that is, not as a skilled workman.

Q. Do you know anything about patents?

A. I do; yes, sir; some.

Q. Have you made patents of furniture a study?

A. I have; yes, sir; some.

Q. For how many years?

A. Four years.

Q. Have you given special attention to patents in relation to folding beds?

A. I think, for the last three years, I have.

Q. Are you familiar with the Everitt patent and improvements on his bedstead?

A. I am; yes, sir.

Q. Can you state the different features about the Everitt bed and the finish of them?

A. One of the important features of the Everitt bed is this claim for the extended brackets. At the time that this contract was made between Mr. Everitt and the Hale & Kilburn Manufacturing Company there was no folding bed made where there was any place to put the bed clothes and stow them away in the bed, and the value of Mr. Everitt's patent grew out of this fact, that in the bed, by these extended brackets, he provided a place for the bed clothes; and, oftentimes, in a patent, a very little thing makes it of great value; small improvements. The smallest thing in the sewing machine, the eye of the needle, makes the sewing machine valuable, and so it was in the folding bed, and in almost all cases when you get the first little improvement that makes the thing practical, and it leads to others.

Mr. OTTERSON: Won't you stop this lecturing and confine yourself to facts? I do not want a lecture on the subject of patents, and have not time to stay and listen to it.

By Mr. BOWMAN:

Q. I am asking about the leading features of the Everitt bedstead and the finish of the Everitt bedstead; you started out by stating that the extended brackets were the leading features.

A. Those were the leading features.

Q. Was there any other leading feature about the Everitt bedstead?

A. This extended bracket also extended the height of the cornice so as to give the bed good proportion, and so that it would look well. It had an advantage in that respect over the Stark patent; in fact, the Stark was never practicable and of no value; never was made and never will be made for the market.

Q. What do you know about the finish of the Everitt bedstead as to the mirrors?

A. I know this, that the bed is made either with or without a mirror. There is a place left in the front of the bed which may
309 be supplied with a mirror if a person wants that style of finish, or it may be for a panel finish, which will also make it a perfect bed; but the bed is not complete without either one or the other, any more than a looking-glass and frame, with a place for the glass, would be complete without the glass. It would not be a complete looking-glass.

Q. Then the looking-glass, or panel, or mirror, as the case may be, is a part of the bed?

A. It is part of the bed. So, also, a bed is not a bedstead complete without it has a bottom to it. No bed would be complete without it, and when a bottom is selected it remains for the purchaser of the bedstead to decide which style of bottom he will have to make the bed complete, to make it a complete bedstead.

Q. Do you know anything about the ebony and gold finish; is that kind of finish a part of the bedstead also?

A. I should say so; the same as if I bought a chair with ebony and gold finish; I should expect to pay more for it.

Q. All these things have their influence in regulating the price?

A. Yes, sir; certainly.

Q. Did I understand you to say that before you saw Mr. Stark in Philadelphia Mr. Kilburn got you to write out to Topeka, Kansas, to see whether he was there?

A. Yes, sir; to see whether he still lived there.

Q. And the answer came back that he did?

A. Yes, sir; from the postmaster; he did not want to write to him for fear it would create suspicion to have a letter go from a company that made a folding bed, so it was decided to write that way.

Q. Did you afterward write to Mr. Stark, or anybody about him, to Kansas?

A. I did not; the arrangement was that I was to go and see Mr. Stark, but Mr. Stark appeared before I was ready to go.

Q. Then the next thing you knew about Stark was his appearance here in Philadelphia at the defendants' store?

A. Yes, sir.

Q. Did Mr. Hale ever see you after you left Philadelphia in reference to the improvements you had made in connection with the Everitt bedstead?

A. Well, I do not know what you would call it; he saw me at the American Institute fair in New York, and got out papers to arrest me under a charge of obtaining money under false pretences.

Q. I asked you whether he ever saw you in reference to the improvements which you had made on the Everitt bedstead; did he write you a letter concerning them?

A. Yes, sir; I had forgotten that; that was at Boston.

Q. I am asking you about that?

A. I was stopping at Boston, at a hotel there, the Milliken House. One Sunday morning I came from my room, and right opposite to where I came into the room, on a lounge, sat Mr. Hale. He got up,

and "Why," said he, "I am surprised to see you." I told him I was equally surprised to see him, and we sat down on the lounge and talked over matters awhile, and finally said he, "I have been thinking over the matter of your chair and patent books, and," says he, "I have thought of the offer you made before you went away, and on my own responsibility, without consulting the company, I have concluded to accept your proposition." I had offered to sell them the whole for $200.

Q. The whole of what?

A. My right to the chariot chair, upon which they were paying me $200 or $300 a year royalty, and my patent books; I think, fifty volumes in number. I could not carry them about the country, as I was all broken up, and so I accepted it. I made up my mind that it was no use to hang on there any longer, for they had thrown me overboard, as I could see plainly, and I went to the desk to make the agreement. Then he said, after we went there, "How about the bed models; hadn't you better throw those in?" I had written the agreement for the others first, and I told him, "You know what our agreement was in relation to them; that I was to have a royalty if you ever used them." He said that they never should use it; that it was of no value to them, as they had previously stated be-
310 fore, and that if they ever did use it I should have the royalty; but he said they never would. So we drew up another agreement, a supplementary agreement, for the bed, making the consideration one dollar.

Q. You mean the improvements you have made on the Everitt bed?

A. Yes, sir; and I gave them an order on the place where I had boarded; I had left them here. I gave a letter to the lady who kept the boarding house, and he went and procured the models, and this (letter produced) is the letter I received after he got home.

Q. Is that the letter you received from Mr. Hale in reply?

A. Yes, sir.

Q. Who is the "Mr. E." referred to in that letter?

A. Mr. Everitt.

(The letter offered in evidence by Mr. Bowman, and marked "No. 65, Jan'y 12, 1880, R. A. W.")

By Mr. OTTERSON:

Q. Whose memorandum is this in pencil (the letter shown witness); is that in Mr. Hale's handwriting?

A. That is part in my handwriting; "Mrs. Kunzman, 606 Spruce St.," is in my handwriting, I think, but the other, "H. S. Hale got Stevens' models," I should think is not in my handwriting.

Mr. BOWMAN: I only offer in evidence the letter written in ink; the pencil marks have nothing to do with it.

(To the witness:) Have you anything further to say in that connection?

A. I went to Hale, Kilburn & Co.'s store, in Boston, the next morning. Mr. Stebbins had charge of the store. He said to me,

"What was Harry on for?" I said, "He told me he came on to see you about business of importance." Said he, "He did not have to come on to see me." Said I, "He did not come on to see me, because he did not know I was here." Said he, "Yes, he did, because I wrote him last week that you were stopping at the Milliken House." Then I thought they were going to get the beds away from me; that this was a plot. Then I came on to New York, and I had agreed to sign over this patent, which was bringing me a royalty, and these books, for $200, $98.50 being an account that I owed them—that I came out in debt for traveling on the last trip; and I came on to New York, and I made up my mind.

Q. Never mind what you made up your mind to; state what you did.

A. As you see in the letter, he said he would send me the money. I went to the New York store, and the money was not there. I telegraphed him, and he ordered them to pay the money; then I came right on to Philadelphia. There was nothing said about it until after waiting three or four days, and finally Mr. Hale came to me and said he would like me to go to Howson's and sign the application for the patents on the beds. Said I, "Mr. Hale, suppose I go down; I want to go down and see Mr. Kilburn." Meantime I had seen that steps had been taken to make the bed. I went up to where Mr. Kilburn was to work, in the third story, and told him the circumstances of Harry's coming there, and said, "I am ready, and I will pay you the money back." Said I, "This was obtained from me—this agreement—through misrepresentation; I am willing to pay you the whole back."

Q. What money were you going to pay back?

A. The money that they had paid to me; but, said I, "I cannot pay you the amount of the account, of course."

Q. What money was this?

A. The money they had paid me for the patent and for the books. The consideration of the bedstead matter was one dollar, and the $199 was for the chair patent and the patent reports of fifty volumes. Says I, "I can pay it all back, and throw the whole of it off, if you desire;" and Mr. Kilburn says, "You go down and sign the papers; I will make it all right." Said I, "Mr. Kilburn, you know how you promised to sign those papers for me, time and again, last winter, and deceived me, and this is another step in that direction." Just then Mr. Harry Hale came up the elevator, and said he, "I won't take the money. We want those papers signed."

311 I said to him, right straight, "I will never sign them." He went back and said to Mr. Kilburn, "You go down and make it all right." Says he, "It has put Harry in a bad position here, this matter has, and do not you get mad, both of you, but fix it up." So I said I would come in in the afternoon and have a talk with Harry. I came in, and I told him, "I have only one condition; if you give me time I can pay you the amount of the account, although you paid me by your receipt for the account." He said he knew what he could do. He had counsel, and he would give me until next Monday noon to sign those papers. I made up my mind that

it was no use for me to stay there any longer. I thought the matter all over, and I made up my mind to leave the place, and did so. Monday morning I did so, but first executed the assignment of the chair, and left my patent reports according to agreement, and enclosed the due bill which was owing to me here for a little bit of work they did for me on Saturday, and told them to take out the dollar, which was the consideration for the bed, and that I should not assign the bed over.

Q. And that was the end of your connection with them, was it?

A. Yes, sir; that was the end. I left the city.

By Mr. OTTERSON:

Q. You wrote to them to that effect?

A. Yes, sir; and enclosed the assignment of the chair, and I have the assignments here on record in the Patent Office, as I executed and sent them.

Q. When you came on from Boston did you notice whether the defendants had made any arrangements to manufacture the *the* bedstead according to your improvements?

A. Yes, sir; I was informed they had made arrangements to make them.

(Objected to by Mr. Otterson.)

Q. Were you informed by any one in connection with the defendant's employment?

A. Yes, sir.

Q. State by whom.

A. It was the man who packs the beds.

Q. Is he in the defendants' employ?

A. Yes, sir; and they are now making the beds substantially according to my plan.

Q. State whether or not Mr. Kilburn sent you to No. 230 South Second street to see and examine one of the Stark beds.

(Objected to by Mr. Otterson as leading.)

A. Yes, sir; I went there; he sent me to see if Mr. Hoover had the springs in and the weights on it. He said he would not know me, and I could go there and look it up.

Q. When was this?

A. I cannot tell exactly; it was some time in 1877, I think.

Q. Was it before they got the assignment from Stark?

(Objected to by Mr. Otterson.)

A. Yes, sir; it was some time before.

Q. You are sure of that, are you?

A. Yes, sir; I did not know the bed under the name of the Stark improvement, but it was a bed that was there.

Q. You at that time did not know that it was the Stark patent?

A. No, sir; I did not know anything about the Stark bed.

Q. But Mr. Kilburn knew at that time that the Stark bed was at that place?

(Objected to by Mr. Otterson.)

A. I should think Mr. Kilburn knew of the bed at that time of Stark. He knew there was a bed there, and it was the Stark bed, except they had put the weights —. No, it was not really the Stark bed, because they had put the weights on. Mr. Kilburn said he had to make a bed of some kind, and he wanted to see if this had the weights or connecting rods.

Q. Do you know who called Mr. Kilburn's attention to it?

A. Yes, sir; I saw it in the store, and talked to Mr. Kilburn about it, and he wanted me to go and see if it had the weights. I told him I thought it had, from the operation of it, and he said he wanted me to see it because he wanted to ascertain what he was selling.

312 Adjourned until Friday next, January 16, 1880, at 3 p. m.

The meeting arranged for Friday, January 16th, 1880, was on account of the inability of Mr. Otterson to attend, continued until Monday, January 19, 1880, at 3 p. m.

PHILADELPHIA, MONDAY, *January* 19, 1880.

Parties met at the office of the master.

Present: The master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Anderson, representing Mr. Otterson, and Mr. Stevens, the witness under examination.

Mr. ANDERSON: I have been requested by Mr. Otterson to attend this meeting this afternoon and state that professional business has called him to Washington, and that he is unable to be here; but will try to fulfil any appointment which may be made for him, say for Wednesday or Thursday of this week.

Mr. BOWMAN: I desire to state, and I wish it entered upon the minutes, that I have been compelled to keep Mr. Stevens, the witness under examination, here this entire week. I desired that his examination should be finished last week. I now request the master to make an order for the examination of the witness before Wednesday night, because his business engagements peremptorily require him to be in Bostom on Thursday morning or lose his situation.

The MASTER: I direct that the next meeting in this cause shall be held on Wednesday next at 12 noon, provided that that hour will not conflict with the professional engagements of the counsel. If the hour of noon does conflict with such professional engagements, then I direct the meeting shall be held at 3 p. m.

Mr. BOWMAN: I also request that in case Mr. Otterson is not present this examination shall proceed, and that Mr. Otterson shall lose his right to cross-examine the witness now here.

The MASTER: It shall go on whether Mr. Otterson is present or not.

PHILADELPHIA, WEDNESDAY, *January* 21, 1880.

Parties met at the office of the master.

Present: The master, Mr. Everitt, Mr. Stevens, the witness under examination, Mr. Otterson, Mr. Cheney Kilburn, Mr. H. S. Hale.

On account of the professional engagements of Mr. Mitchell, in the supreme court, and of Mr. Bowman, in common pleas No. 2, the meeting adjourned until 3 p. m.

PHILADELPHIA, WEDNESDAY, *January* 21, 1880.

Parties met at the office of the master.

Present: the master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, and the witness, Mr. Stevens.

ASHER B. STEVENS cross-examined:

Mr. OTTERSON: I was mistaken in saying that the paper which was called for at the last meeting, being an agreement between the witness and the defendants, had been produced and marked in this case. It is now produced.

(Paper produced by Mr. Otterson and haded Mr. Mitchell.)

Mr. OTTERSON (to Mr. Mitchell): Do you intend to offer this paper in evidence?

Mr. MITCHELL: No, sir; I do not desire to offer it now.

Mr. OTTERSON: Then, although it is a little irregular, I will offer it myself.

(Paper marked "No. 66, January 21, 1880, R. A. W.")

By Mr. OTTERSON:

Q. Is this paper you refer to in your examination-in-chief an agreement between yourself and the defendants?

A. It is.

Q. There is mention in this paper of inventions only, without specifying anything in particular except the chairs?

A. Yes, sir.

313 Q. Is this paper which between you was understood as covering the improvements which you proposed to make upon the folding bed?

A. That paper covers all the improvements that I should make, that they should desire to have made.

Q. Upon a folding bed?

A. Upon a chair or anything else.

Q. But it included the folding-bed improvements as well as all others?

A. Anything that I could do that was desired.

Q. Do you consider your memory perfectly reliable in all respects?

A. I think it is very reliable; yes, sir.

Q. Do you say very reliable or pretty reliable?

A. I think it is quite reliable; yes, sir.

Q. The notes of the examiner report you as saying that Mr. Kilburn told you to write to the postmaster at Topeka, Kansas. Are you sure your recollection is correct on that subject?

A. I asked Mr. Kilburn if he had not better write to the postmaster at Topeka, Kansas, and find out whether Mr. Stark lived there, and he replied, no; it would not do for them, and that I had

better do it; that it would not do for a letter to come from the factory, for it would excite his suspicion if a letter came from a folding-bed factory.

Q. Then it was your proposition and not his?

A. In the first place, yes, sir.

Q. Do you say that you told him you had written to Topeka or did the matter drop there and then the writing come?

A. It dropped there until I got the reply. I think—I don't know—I may have told him I had written; but after I got the reply I told him Stark did live there.

Q. You are quite sure of that, are you?

A. Yes, sir.

Q. Your recollection is very good on that subject?

A. It it; yes, sir.

Q. I put it to you so pointedly because the recollection of other parties is quite different, and I want to know whether you are very sure of the statement you are making?

A. I am very sure of it; I think I remember the transaction very accurately.

Q. Did you have any conversation with Mr. Stark at all about what brought him here?

A. No, sir.

Q. Do you mean to be understood as saying that you took the assignment from Stark to them to Washington with you?

A. Yes, sir.

Q. You are clear in your recollection on that subject?

A. Yes, sir. When Mr. Stark made the trade he delivered it to the company.

Q. You were not present, I suppose, when it was done?

A. I was not present, but I was told so.

Q. By whom were you told so?

A. By Mr. Kilburn.

Q. Well, go on and state it.

A. That he delivered the patent papers which he had sent on to Washington to Mr. Mason to have an application made out. That was somewhere about the 19th of February, I think, and the papers came back the 23d. The application for the patent and the assignment came back prepared by Mr. Mason for signatures, and then, when they were executed, which was on the evening, I think, or the day of the 27th of February, on that evening I went down to Washington with them.

Q. Do you not know the fact to be that the paper you referred to was prepared in Washington by Mr. Mason in the presence of Mr. Kilburn and Mr. Stark, and was executed there in Mr. Mason's office immediately upon its preparation?

A. The second assignment was; yes, sir.

Q. Do you not know that that first paper you speak of and call an assignment was drawn in Mr. Kilburn's office by Mr. Henry S. Hale and there executed by Mr. Stark?

A. No, sir; the application was prepared and sent back for his

signature and the assignment upon it; it has to be necessarily so; they could not make an application without.

314 Q. Wait. I am not going to examine you about the law or the habit of the patent offices. I only ask you about facts, and I ask you whether you do not know that the original paper, called an assignment of the Stark patent, was drawn in Mr. Kilburn's office, in Sixth street, by Mr. Harry Hale, was signed there by Stark, and was never seen by Mr. Mason until afterward, when it was presented to him by Mr. Kilburn?

A. When I went into Mr. Mason's office——

Q. Won't you answer my question, please?

A. I carried the original assignment and the applications for the patent into Mr. Mason's office with me.

Q. And you were alone at that time?

A. I was alone; yes, sir. I see that I am made to say that when I went into Mr. Mason's office that morning Mr. Mason was writing a document—it should be reading a document, which he handed to me after he got through, which document was the agreement betweeen Mr. Everitt and the Hale — Kilburn Manufacturing Company.

Q. You say that Mr. Harry Hale handed you these papers. Do you mean this application and the assignment?

A. Yes, sir.

Q. Did you read them through?

A. I did not read them through. I had not time. I was just going to my tea, preparatory to take the train at eleven o'clock, at the Baltimore and Ohio depot.

Q. Did you read them?

A. I did.

Q. When and where did you read them?

A. After I got to Mr. Mason's office we looked them over; I think it was while I was waiting. Mr. Mason had something to do there, and before I gave them to him I looked them over to see whether they were all correct.

Q. How long was it after Warren Hale had told you that Mr. Stark had been in the store before you took this trip to Washington?

A. I had taken one trip; you mean this second trip?

Q. I mean this trip to Washington in which you carried the papers just spoken of.

A. I should think, perhaps, it was a week or ten days; I can't tell exactly.

Q. You said that Mr. Kilburn requested you not to let Mr. Everitt know that Mr. Stark was in the city. Do you not know that Mr. Everitt was informed, on the very day of Mr. Stark's arrival here, that Mr. Stark was in the city; on the very day of his first appearance in the office?

A. I think I said that Mr. Kilburn requested me not to let him know of the proceedings; not that he was in the city. I think, if you will look at the evidence, you will find that to be the case.

Q. The question is asked, page 435, "State whether anything was said to you by these defendants, or either of them, cautioning you

not to let Mr. Everitt know of Mr. Stark's presence in the city." And your answer was, "Mr. Kilburn always cautioned me not to let Mr. Everitt know of it." Do you not know that Mr. Warren Hale, on the day of Mr. Stark's first calling at the office of the defendant after his arrival in the city, told Mr. Everitt of the fact of Mr. Stark being in the city?

A. I did not know it until recently.

Q. How did you learn it recently?

A. Mr. Everitt informed me that he told him.

Q. What do you mean by recently—since you were examined in chief here?

A. No, sir; it was some time within—I don't know, but it was at the time somebody was to go and look at the records of the office.

Q. Was it before you read the notes of testimony in this case?

A. I could not tell you; It was before I read some of the notes.

Q. I take that for granted, because some of the notes were not in readable condition until your testimony was given.

A. I think Mr. Everitt told me that some time ago.

315 Q. Was it before or after you read the notes of evidence in this case?

A. Before; he first told me before.

Q. How?

A. He told me before; yes, sir.

Q. Do you still say that Mr. Kilburn cautioned you not to let Mr. Everitt know of Mr. Stark's presence in the city?

A. I knew that he told me not to let him know where Mr. Stark boarded, and not to let him know of the proceedings; that he did not want him to know; but I think Mr. Kilburn told me that he had told Mr. Everitt that Stark was here.

Q. You say that Mr. Kilburn told you that he had told Mr. Everitt that Stark was here?

A. Yes, sir; I am very sure that he told me that he had told Mr. Everitt Stark was here, and told him what he had asked for the patent.

Q. Do you still think that Mr. Kilburn cautioned you not to tell Mr. Everitt that Stark was here?

A. I shall have to correct my evidence on that question.

Q. That is your right to do, my dear sir.

A. I think that Mr. Kilburn told me that he told Everitt Stark was here, but he told me not to let him know where he roomed on Fourth street, and not to expose the proceedings or say anything about it; to be careful; and I avoided talking with Mr. Everitt entirely.

Q. Do not you think that inventors sometimes, for their own purposes, like to be kept perfectly quiet as to their habitations?

(Objected to by Mr. Bowman.)

A. Yes, sir.

Q. You have found it desirable in your own case, have you not, to keep your place of residence unknown?

A. Yes, sir.

Q. And Mr. Kilburn had a charge of that kind over your secret, had he not?

A. Yes, sir.

Q. He knew where you were, and he did not want other people to know?

A. He did not want other people to know.

Q. And you did not want other people to know?

A. And I did not want other people to know.

Q. So that it was not a remarkable thing for him to caution you not to let Mr. Everitt know where Stark was?

A. No, sir; not a remarkable thing.

Q. In the application for the reissue of the Stark patent, you insisted upon saying, "You would find enough of it torn off and written in Mr. Mason's handwriting to change the parties to whom it ran to, to change it to Mr. Stark." Why did you make that statement?

A. I looked at the files of the office to corroborate an affidavit that I made before I left the city, here.

Q. When did you do that?

A. When did I look at the files of the office?

Q. Yes, sir.

A. It was three or four months ago; I cannot tell you exactly.

Q. Do you mean to say when you left the city, after you refused to sign the papers that Henry S. Hale required you to sign?

A. Yes, sir; I do.

Q. Now, you are sure that your recollection is correct?

A. Yes, sir.

Q. Are you as sure of that as you are of anything that you have testified to in this case, either in direct examination or in cross-examination?

A. Of what?

Q. As to this statement as to the making of this paper in the files in Washington?

A As sure as I am of anything; that the papers for the application for the reissue was changed there, and so is shown in the office at Washington.

Q. Changed in the manner and for the purposes set forth in your testimony-in-chief, and in my question?

A. Yes, sir.

316 Q. And you are as sure of that as you are of anything you have testified to in this case?

A. I am as sure of that as of anything.

Q. You have no fear that your memory would mislead you in anything of that kind?

A. No, sir; it could not mislead me; the whole circumstances made too strong an impression on my mind. It was the breaking up of my business and my hopes, and it made a great impression on my memory.

Q. In the examination-in-chief, you are reported as saying that Mr. Harry Hale told you "he had counsel, and he would give you

until Monday noon to sign those papers"—referring to the papers about his chair and the improvements that he had been making on the folding bed?

A. Yes, sir.

Q. I produce and show you a letter dated August 9th, 1878 (letter shown witness); is that your handwriting?

A. Yes, sir.

Q. Did you send that letter to Henry S. Hale?

A. I did.

Q. Is it not suggested by you, there and then, that Mr. Hale should give you until Monday to make those settlements?

A. Yes, sir.

Q. Then it was not Mr. Henry S. Hale's proposition, was it?

A. I did not say it was his proposition. I went to the office; I wanted to try and have the matter settled peaceably, and he said he had counsel, and it was arranged that I should have until Monday noon. I told him if I concluded to sign the papers I would do it by Monday noon, and that is the way I left it. I did not want to leave; I was trying to get money to pay the account; I had not money enough to pay the whole.

(The letter offered in evidence by Mr. Otterson, and marked "No. 67, Jan'y 21st, 1880, R. A. W.")

Q. What affidavit was that you wanted to verify which induced you, three or four months ago, to look at the files of the Patent Office in Washington, and examine this application for the reissue of the Stark patent?

A. It was an affidavit that I made after this meeting with Harry Hale that day in the office.

Q. What day?

A. That day; that afternoon; that night.

Q. You said, a few minutes ago, that that affidavit was made three or four months ago?

A. No; you misunderstood me; I went to Washington three or four months ago to look at the affidavit; this testimony put me in the way of swearing to it falsely, as I had sworn to this affidavit before I left, and I wanted to verify it.

Q. Then it was near eighteen months ago that the affidavit was made?

A. Yes, sir; I should judge so. Well, it was that day, that Saturday afternoon, before I left the city.

By Mr. BOWMAN:

Q. Could you tell if you saw the affidavit?

A. I could; yes, sir. (Affidavit shown witness by Mr. Bowman.) Yes, sir; this is the affidavit. When I left the city I did not expect to come back, and it was so understood.

By Mr. OTTERSON:

Q. Understood by whom?

A. By Mr. Everitt's attorneys.

Q. And your leaving the city was without the knowledge of the Hale & Kilburn Company?

A. It was; yes, sir—no, sir; that is my mistake. I wrote them a letter the day I left inclosing the assignment of the chair, which was to perfect their title to it, and a due bill to pay the account I had with them, and stating I was leaving the city and did not intend to return.

Q. But that would not reach them, then, until after you had left?

A. Quite likely; I dropped it in a lamp-post.

Q. And, in addition to your leaving, they did not know anything of your purpose to go?

A. No, sir; they did not.

317 But Mr. Everitt did know and his attorneys?

A. Yes, sir; I suppose they did. I think I told them. I am very sure I did.

Q. Did Mr. Kilburn know that the bed that was at Mr. Hoover's place of business was a Stark chair?

A. I do not think he did.

Q. I understood you to say so before.

A. I say the notes have it so reported. It was my mistake. I thought that Mr. Bowman was going to take me up so that I could correct it. If I said that I said what I did not mean.

Q. Were you present, and where, at the time that it was agreed upon or arranged that the letter should be written, which was afterward written and dated April 10th, 1878?

A. All I know—you mean the letter of notification?

Q. Yes, sir.

A. All I know about that is that Mr. Kilburn and I came in the train together from Baltimore. On the return he said that Mr. Stark would write a letter of notification.

Q. You mean Mr. Mason, I suppose?

A. Mr. Mason, I mean; yes, sir.

Q. You are sure of that?

A. I am sure he told me, and I think it was at that time. We were talking the matter over. He told me, I think, when we were going up. They had talked a little low; Mr. Stark, Mr. Mason, and Mr. Kilburn were in the other end of the office, and all I knew about those titles and that there was a suit to be brought was what he told me afterward. Really, I do not know just when I was told; but I know I knew it. I knew it was to be done.

Q. At that time you were upon confidential terms with Mr. Kilburn, were you?

A. Yes, sir; I was—that is, I was in this respect, at least——

Q. And your relations were very friendly?

A. Yes, sir; very friendly—or, at least, I thought so.

Q. And when you found out that they were not going to make your bed, then you went to Mr. Everitt and told all that you had heard, and made an affidavit of it?

A. Yes, sir; let me correct that. It was not when I found out that they were not going to make my bed, for I did not know that, and never found it out. But it was when I found that the agree-

ment was not to be fulfilled with me; that they would not give me the agreement in writing; and that by the assignment of my half interest in the chair to them, I no longer had any protection in that.

Q. And then you got angry?

A. Yes, sir; I did not get angry at that time; yes; I did get angry once, and did go down and have a talk with Mr. Kilburn.

Q. I do not mean your blowing out, but when you got angry?

A. I got angry when Harry wanted me to sign those papers, and threatened me, indirectly, in the way he did.

Q. And in consequence of that you went and told Mr. Everitt and his attorneys all that had transpired, and all that you could think of, between you and them with reference to Mr. Everitt's matters and the company?

A. I made that affidavit. I tried very hard to have matters carried out as we had agreed upon. I saw that it would be bad for me and for them if they were not.

Q. If what were not?

A. If the agreement was not carried out.

Q. Between them and you?

A. Yes, sir.

Q. And when you found that they had other purposes than the carrying out of that agreement, and you became angry in consequence of it, then you went to Mr. Everitt and to Mr. Everitt's attorneys and reported all that had transpired between the defendants and you while you were enjoying their confidence?

A. I think I did; that is, substantially.

Q. You meant to do that?

A. Yes, sir.

Q. You meant to do the defendants all the harm you could at that time?

A. I thought I could not stand it. I knew they would
318 have to adopt, in order to succeed, my bed, and I made up my mind that I would not stand and see them enjoying the benefits of my efforts if I could help it.

Q. And you meant to do them all the harm you could in that direction?

A. I meant to foil them; yes, sir; to foil them in the effort.

Q. And you have been acting under that spirit and feeling ever since?

A. Not at all. I never intended to come back, and should not have come back here had I not been informed that a warrant was out for my arrest, and that I was placed in a position where I was liable to be prosecuted for perjury, unless my statements were substantiated. But for that I should not have troubled them.

Q. Where did you hear that a warrant was out for your arrest?

A. Mr. Morrill told Mr. Waite.

Q. Who is Mr. Waite?

A. Well, Waite is a member of the firm of Thompson, Periey & Waite

Q. Who had issued the order and warrant for your arrest for perjury?

A. No, sir—for my arrest, they said, for obtaining money on false pretence—and that was in reference to these assignments.

Q. But who had done that?

A. That Mr. Hale did.

Q. When were you informed of this?

A. Last October, I think it was; yes, sir, last October. The day after the effort was made.

Q. Where was the effort made?

A. In New York city.

Q. By whom?

A. By Mr. Hale, so they said.

Q. And that is what brought you back to Philadelphia now, in January, is it?

A. That was one thing. I wrote to Mr. Snow. I heard he had left their establishment, and I wrote to him to know the grounds, and to ask him if he knew the grounds on which I was to be arrested, and he replied to me——

Q. Never mind about this correspondence, unless you can produce it.

A. I think it is in my valise.

Mr. BOWMAN: If Mr. Otterson calls out these things I insist upon all the information being upon record. The witness states that he heard that the defendants were going to have him arrested, and that he came on here to vindicate himself if there was any warrant issued, and to substantiate what is in that affidavit which he swore to.

Mr. OTTERSON: The witness has not sworn to any such thing, if I understand his testimony; and that is all I have to say about that——

(To the witness:) You say you first heard of this in October last?

A. Yes, sir.

Q. Then you did not come in October to vindicate yourself, but came in January?

A. I did not come in October; no, sir.

Q. When you did come in January, did you go to the defendants' office to let them know you were here and ready to answer any complaints they had against you?

A. I did not.

Q. Have you been to the defendants' place of business since you arrived in the city?

A. I have been by there.

Q. Have you been there?

A. No, sir; I have not. I did not go there, because I thought it might be construed that I was figuring with them. I did not know what might be. I thought it was best to keep away. I knew I had this to meet, and my friends advised me it would be better to meet it than have it hanging over me.

Q. Did you report at all to them, directly or indirectly, that you were in the city since you have been here?

A. No, sir; not that I am aware of.

319 Q. Had they any means of knowing that you were in the city prior to the time when you came into this office to undergo this examination-in-chief?

A. Not that I am aware of.

Q. Then will you explain how you are getting vindication by the course you took after you arrived here?

A. I said I went to Washington to verify that affidavit.

Q. You said you came here to Philadelphia in consequence of what you had heard about your being arrested, and you came to vindicate yourself.

A. I came here, hearing that the defendants wanted to arrest me, in order that they might do so if they wanted to, and that I might meet any charge, if they wanted to bring any against me. I knew, if I was arrested in New York, I would be where I had no friends, and they might give me trouble if any charges were brought against me. I did not know upon what grounds the charges would be made against me, and so I thought it was best to go where I would have somebody to help me if I had to meet any charge.

Q. And when you arrived here you took no means of informing these defendants of your presence in Philadelphia and to inquire whether or not it was true that they were conducting proceedings against you?

A. I did not here; I did in their store in New York.

Q. That has nothing to do, I suppose, with your coming to Philadelphia for vindication?

A. It had something to do with it.

Q. Have you endeavored to ascertain whether any such thing is in contemplation?

A. Yes, sir.

Q. How and from whom did you inquire?

A. I asked Mr. Lindsey, in New York, something about it.

Q. I am talking about Philadelphia.

A. Oh, no, sir. I thought I was informed before I came.

Q. Since you arrived in Philadelphia you have taken no means to inquire whether the defendants contemplated prosecution against you or not?

A. Not here in Philadelphia.

Q. How long had you been in Philadelphia prior to your appearance in the examiner's office for examination?

A. The examination was Monday. I think I came to the chief examination Monday morning, I think. Perhaps it was Sunday; I do not remember exactly. It was Saturday evening; I remember now.

Q. Prior to your first examination here?

A. Yes, sir. I left New York on the train that leaves there at three o'clock, I think.

Q. Then am I correct in supposing that the information you had that the defendants proposed a prosecution against you was not an inducement for bringing you to Philadelphia at all, but that there was another reason which brought you?

A. That was one of the reasons which brought me; yes, sir.

Q. And when you got here that reason ceased to be operative, for you took no action on it and made no inquiry about it?

A. I made no inquiry from them. I was afraid I should be arrested.

Q. Did you make inquiry from any one else?

A. No, sir; I do not think I did.

Q. Then it means nothing when you limit your answer to saying you made no inquiry from them?

A. I made no inquiry from anybody in Philadelphia.

Q. Then, although that was one of the reasons which brought you here, you did nothing in pursuance of it after you got here?

A. I am here to the trial; I gave my testimony here.

Q. In what?

A. At the examination-in-chief.

Q. Well, you have given us another reason for your coming here. Now tell us what the other reason is—the other reason, if you have more than one.

A. Well, I should have come before. I did come here once, expecting to testify, after I received the letter from Mr. Snow; but Mr. Mitchell said that it was better for me not to testify then, and to go back and come when he sent word.

320 Q. Then you come, at the solicitation of the plaintiff in this case, for the purpose of testifying here?

A. I did, at their solicitation or notification when the time would be—the proper time. I thought that if I had to meet this, I had better be where I had counsel to help me.

Q. You said that the distinctive feature of Mr. Everitt's improvement upon the folding bed was the extended bracket, making a place for the bed clothes or pillows?

A. Yes, sir.

Q. Do you know whether that was practicable, or impracticable, in actual use?

A. As the bed is now constructed it is not practicable for that purpose.

Q. Do you consider that a valuable improvement?

A. No, sir; I do not consider it valuable.

Q. Do you know how it operates, in effect; how it operates to the disadvantage of the bed, in point of fact, in actual practice?

A. Yes, sir; in some points.

Q. Just state, if you please?

A. It makes the foot board, being so wide, pretty heavy, and requires considerable weight to work it, and requires it to be hinged clear out to the extreme end of the box, so that it has all the leverage against the weights, and it requires a great deal of weight to overcome the weight of the foot board.

Q. Do not you know that in practical use servants are very apt to pull down the bed, before removing the pillows, or bolsters, or whatever is in this receptacle, and that the effect of that was to pry the foot board off its hinges, and so on?

A. Yes, sir.

Q. And that was a source of constant trouble?

A. I do not know so much about that. I saw them in for repairs on that account. I did work on them, but did not know how much of that happened.

Q. Could you state, from the nature of the repairs required, the principle upon which the injury had been inflicted?

A. Yes, sir; I used one a little while.

Q. One of these folding bedsteads?

A. Yes, sir; I slept upon it, and I made up my own bed.

Q. Did you get caught in any such trap?

A. Yes, sir.

Q. Do you know that because of that disadvantage they were obliged to discontinue the use of that so called improvement, and that it was worthless?

A. If they did, it was done after I left.

Q. From what you know of it, you do not consider it valuable?

A. I shall have to tell the truth.

Q. We expect you to do nothing else.

A. I did not consider it a very valuable invention in view of the patents that preceded it.

Re-examined by Mr. BOWMAN:

Q. I want to ask you a question with reference to something which has been touched in your cross-examination—in the first place, your attention was called to an agreement between yourself and the defendants. I want to know whether that agreement was not annulled between yourself and the defendants?

A. Yes, sir; I think it is written on the back of it there, at the time we closed it up.

Q. You were asked by Mr. Otterson whether your statement with reference to the change of the application for patents by the defendants, which you refer to in your examination-in-chief, was as true as anything else you have stated; will you be kind enough to explain what you referred to when you spoke of the records at Washington showing the change as being made? Look at those papers (the application, Exhibit No. 63, shown witness) and explain what the alterations were that you referred to in your examination-in-chief, to which Mr. Otterson called your attention?

A. In this first page here, before the specifications commence, is a petition to the Commissioner of Patents. In the application
321 for a reissue his petition is different from this (referring to the Exhibit No. 63, which had been handed the witness), in that it goes on to state that the patentee believes the patent that is already granted to be worthless on account of defects, in the way it was taken out, or the specifications, and praying the Commissioner of Patents to issue a new patent upon it, and to reissue the Patent. The first specification runs as this does.

Q. What do you mean by the first specification?

A. I would say the first application for the reissue of Stark's patent.

(Objected to by Mr. Otterson on the ground that the parties should produce either the original paper or an exemplification.)

Q. Go on and explain from the point where you stopped—the first application you said was made by whom?

A. The first application, in Washington, was made by Stark, as this one is signed by me, to run to the Hale & Kilburn Manufacturing Co. When the change of the plan, after we telegraphed to stop the record, was adopted, the first leaf was taken off, and Mr. Mason sat at his desk and wrote the new one, and changed the application to have it run to Stark himself, while his son sat at the other desk writing the new assignment to correspond with it. Hence the first application was witnessed by Mr. Roberts, you will notice, and Mr. John Kilburn, and accompanying that was the assignment. In changing the first page they did not change the witnesses. The witnesses' names were not changed that came on the back. They only took off the first page, and forgot to make that change. So there is an inconsistency, you will notice, in the date, that Mr. Roberts signed that there the 27th of February, and it took five or six days to get the new papers and come back, and hence the new application is dated the seventh of March, and the new assignment that was made to correspond with it.

Q. This is the first page of the first application, and it is written in whose handwriting?

A. It is written in Mr. Mason's handwriting.

Q. Was it written in Mr. Mason's handwriting and removed and changed?

A. No, sir; not removed.

Q. Will you listen to my question, and understand me before you answer? I want to get it straight, and I think I understand you. I understand you to say that the original application was made out by Stark for the reissue to run to the Hale & Kilburn Manufacturing Company?

A. Yes, sir.

Q. Then, afterward, that was changed by removing the first page of the application, and putting in its place another page?

A. Yes, sir; that page was written by Mr. Mason himself while his son was writing the assignment, and that page, which is now in the office, is in a different handwriting from the original application, which was prepared by his son.

Q. The first page of the original application, as changed, appears in the writing of Mr. Mason, while the remainder of the paper is in the handwriting of his son?

A. Yes, sir.

Q. How was the paper changed on its face—the second leaf that was substituted—how does that patent run?

A. It now runs to Stark himself.

Q. What was that change done for by these defendants—I mean to have it to run to Stark instead of to them?

A. This contract of Mr. Everitt's contained a clause in which all the improvements of the Hale & Kilburn Manufacturing Company

would be held under its provisions; and Mr. Mason said that there was no need, if they wished to manufacture their own improvements, that there was no need of my spending any more time in trying to carry this arrangement out; and, after Mr. Mason went out of the office, I thought it over, and thought of the plans, that the original agreement between Mr. Kilburn and I being carried out, I could bring a suit against the Hale & Kilburn Manufacturing Company and get a judicial decision on the last clause of the agreement.

322 Q. You mean the agreement between Mr. Everitt and the defendants?

A. Mr. Everitt and the company, yes, sir; and get a judicial decision that Mr. Everitt's patent was really an infringement—and it was to try that that I took the train without consulting Mr. Mason at all and came home. Mr. Mason took the papers and put them up in my box. I had always carried papers there, and I had a box; and he put the application and assignment there, and I told the clerk to put them on file in the morning. I told them on my return that they should stop the record of that assignment, and if they did so there would be nothing to show that Mr. Stark had sold them the patent, and it was done. I told them if they would telegraph to stop the record of that assignment there would be nothing to show that Mr. Stark had sold them the patent. It was stopped, and then, afterwards, we went down and made this change—making the application run to Mr. Stark—and the assignment was changed to correspond.

Q. Then, as I understand you, the object of that was to enable the defendants to have suit brought against themselves and get a judicial decree against Mr. Everitt?

A. That I suppose to be the case.

Mr. OTTERSON: That, he says, was his proposition.

The WITNESS: Not my proposition to have it run to Stark.

Mr. OTTERSON: No; it was your proposition to bring that suit

The WITNESS: Yes, sir; I suggested that, but when I went down I saw that the proposition was changed—and it was changed to have Mr. Mason bring that suit, I suppose.

By Mr. BOWMAN:

Q. Who telegraphed to Washington to have the papers stopped, and not to have the application put on record in the manner as it originally appears?

A. Mr. Hale—Mr. Henry S. Hale.

Q. I understood you to say that Mr. Mason, the defendants' attorney, called your attention to that clause in the agreement between Mr. Everitt and the defendants.

A. He did. He was reading when I went in, and he turned around to me and said, "Stevens, read that."

Q. Was Mr. Everitt's patent and the improvements on his patent an infringement on any patent until the letters of reissue of Stark's were filed?

A. I do not think it was.

Q. Was it not said by Mr. Mason himself, the attorney of the defendants, that Mr. Everitt's patent was a valid patent?

A. Yes, sir; that the claims specified in the patent were valid.

Q. And all this arrangement about the Stark patent was done for the purpose of defeating Everitt in his claim under his patent, and for royalty, was it not?

A. I think that the plan that was adopted was not only to defeat Mr. Everitt, but to induce him to lower his royalty. They thought the royalty was very exorbitant, under the circumstances; that they had patents to buy up, and it was to induce him to lower his royalty under the circumstances.

Q. You were asked by Mr. Otterson with reference to coming on here to vindicate yourself—you arrived here, you say, on a Saturday night, and on the following Monday there was a hearing in this case, was there not?

A. Yes, sir.

Q. And you came here and were examined as a witness?

A. Yes, sir.

Q. You saw the defendants here, did you not?

A. I saw Henry S. Hale here.

Q. You have been in Philadelphia since then?

A. Oh! yes, sir; what do you mean? Since last week?

Q. Yes, sir.

A. Yes, sir; I have been here.

Q. The defendants knew it, did they not?

A. Yes, sir; they know I am here.

Q. You have not concealed yourself, nor kept out of their way, have you?

A. No, sir.

323 Q. You heard that they were going to have you arrested, and you felt that if they had any charge to make against you you would give them an opportunity of doing it?

A. I felt that I would rather have it done here, for, perhaps, you and Mr. Mitchell would help me.

Q. On page 428 of your testimony-in-chief, with reference to the discovery of the Stark patent, you said that you exhibited the fact to Mr. Hale; which Mr. Hale was that?

A. To Henry S. Hale; to Warren Hale also.

Q. Be kind enough to tell me what the papers which I hand you are? (Exhibit No. 63 shown witness.)

A. They are an application for a patent on a folding bed, prepared for me to sign.

Q. Is it not for improvements on folding beds?

A. Yes, sir; "for a new and useful improvement on a folding bedstead." All applications for patents read in that way.

Q. For something that you invented?

A. Yes, sir; it was one of the forms that I exhibited to Mr Mason. There are some slight changes, I think, here, that Mr. Hale made.

Q. State whether or not the defendants knew of Stark and his patent before he, Stark, came on here to Philadelphia?

A. They did.

Q. All of them?

A. Mr. Folger, Mr. Newcombe, Mr. Henry S. Hale, Mr. Kilburn; I showed the drawing of it to them when I found it, or shortly after. Now I wish to say one word before I stop. It has been a great while since I have seen Mr. Mason's handwriting. It is possible that after he made it he had it copied; but the two handwritings are different in the application anyhow, and Mr. Mason wrote it off, I know, at first, but it may have been in the order of his business to have required another clerk to copy it, but I am certain it was Mr. Mason's handwriting, as it now appears. It was different from the original application.

Q. Please state whether or not the defendants are manufacturing folding beds under the drawings of the specifications mentioned in that Exhibit No. 63?

A. Not exactly; they use a little of the features of it. The idea which I struck, to have the bracket come even with the top of the bed when it was up, and even with the top of the side rail when it is down—that is the feature of the pivoting of the foot boards away from the extreme end of the bed, and thereby saving more weight—was making a bed that did not come under Mr. Everitt's patent at all.

Re-examined by Mr. OTTERSON:

Q. Then the principle they are showing you, to which you have just referred, is not covered by any patent, as I understand it?

A. They have connected with it some of their own features.

Q. But the particular principle that you have just referred to is that covered by any patent?

A. No, sir; it is not covered by any patent that I am aware of.

Q. With reference to your explanation, you mean, however, to say that the change, alteration, interlineation, or whatever it may be, and in whose handwriting it may be, is to affect the running of the reissue, as you call it, after it shall have been reissued?

A. Yes, sir.

Adjourned until Monday next, January 26, 1880, at 3 p. m.

PHILADELPHIA, MONDAY, *January* 26, 1880.

Parties met at the office of the master.

Present: The master, Mr. Bowman; Mr. Mitchell, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

M. DANIEL CONNOLLY sworn and examined by Mr. BOWMAN:

Q. You are a member of the bar?

A. I am.

Q. And make a specialty of patent cases?

A. I do.

324 Q. Do you know Mr. Everitt?

A. I do know Mr. Everitt, and have known him since about 1873 or 1874.

Q. Do you know Mr. Henry S. Hale?

A. I have met the gentleman a couple of times.

Q. Do you know Mr. Cheney Kilburn?

A. I can hardly say I know him. I met a gentleman represented to be Cheney Kilburn at the office of Coppee Mitchell, Esq., on an occasion nearly two years ago. That is the only time I now recollect having met Mr. Kilburn.

Q. I want to direct your attention to that meeting at Mr. Mitchell's office, to which you have just referred—please state, as near as you can, about when that meeting took place?

A. That meeting referred to took place on the twenty-second day of May, 1878. I am thus precise about the date because I accompanied Mr. Everitt on the occasions referred to, in a professional capacity, and I made an entry—as is customary—of a charge on that service; and something transpired on that occasion that had reference to a personal matter of my own, and I wrote to my brother in Washington—who is my law partner—about that matter. I looked to-day at my letter book to see the date. That leaves the impression on my mind as stated.

Q. Will you be kind enough to state what the meeting at Mr. Mitchell's office was about?

A. I went there for the purpose——

(Any purpose of the witness objected to by Mr. Otterson.)

On the occasion stated I went to the office of E. Coppee Mitchell on Walnut street, between 5th and 6th; I accompanied Mr. Everitt there and met Mr. Mitchell, Mr. Otterson, Mr. Henry S. Hale, and a gentleman who was introduced as Mr. Kilburn, or stated to be Mr. Kilburn, and, after a sort of a preliminary interview had taken place, I met Col. R. Mason, of Washington, whom I had known, not intimately, but had known him on the street in a general way for a period of about fifteen years. At that interview was discussed the question of the payment of royalties by the Hale & Kilburn Manufacturing Company to Mr. Everitt on a patent bedstead, which the company were manufacturing for Mr. Everitt. It was represented that the patent infringed a patent which had been granted to one Stark. Col. Mason stated that he represented Mr. Stark; he came on his behalf. "Bearing the olive branch;" I think that was the expression he made use of "to the infringers." He intimated that Mr. Stark would be disposed to make an amicable settlement, if the parties paid to him five per cent.—I think it was five per cent., but I won't be positive. To the best of my recollection it was five per cent: of the selling price of the bedstead, as a royalty. Some question was raised by myself as to the validity of the Stark patent, or rather the reissue of the Stark patent, in view of the decision of the Supreme Court of the United States in the case of Gill *vs.* Wells. Colonel Mason answered the question and defended the validity of the reissue. Subsequently to this question—or possibly it may have been prior, but I think subsequently—I asked Col.

Mason if the title to the Stark patent was in the patentee, having reason then to suppose it was not. He answered—I cannot remember his exact language; but it was substantially to the effect that it was, or that he believed it was, or that so far as he knew it was. At all events, his language was of such a character as to convey at that time the impression that, so far as his knowledge or information went, Stark was the owner of the patent, and that he, as Stark's representative, was qualified and authorized to make terms in regard to the use of the improvements covered by the reissue; and it was in the capacity of Stark's representative and attorney, and for the purpose stated, that he said he was present on that occasion. After having delivered himself of his message he rose up and left the office, leaving the other gentlemen named in conversation.

Q. During this interview was there any conversation with reference to the ownership of the Stark patent?

A. I think, at or about the time I put the question already stated, Mr. Mitchell made some remark in the same connection. I
325 do not distinctly remember what it was or what answer it produced, nor do I now remember anything else that was said about the ownership of the patent at that time.

Q. Did Mr. Mason enter the office of Mr. Mitchell alone?

A. My impression is that he did, some time after the other gentlemen had presented themselves. Still, I cannot be positive. I do distinctly remember that several persons were present before Col. Mason entered, and that Mr. Otterson and Mr. Mitchell were conversing between themselves for a few minutes at least before Col. Mason's entrance.

Q. You are clear that Col. Mason appeared on that occasion as the representative of Stark?

A. I am positive that he represented himself as being the agent or attorney of Stark.

Q. Do you remember his producing the reissued letters of the Stark patent, and reading them over, and explaining them to the defendants who were present?

A. I do not know whether or not he produced the reissued letters patent himself or whether they were produced by any other party. I do remember distinctly, however, his reading over the claims annexed to the letters patent, and specifying in what particular the bedstead manufactured by the Hale & Kilburn Manufacturing Co. under the Everitt patent infringed upon those claims.

Q. And what did he say was the object of his visit there as to what Stark wanted by way of settlement?

A. He came, as I have already stated—and I think I use his exact language in that respect—to offer or hold out the olive branch to the parties, and that his object was to permit the manufacture to go on on payment of a royalty to Stark of five per cent.

Q. Do you remember Mr. Mason expressing an opinion about the validity of Mr. Everitt's patent? And, if so, state what it was.

Mr. OTTERSON: I object to all this line of examination. If Mr.

Mason was the representative of Stark at the time, I do not know what his statement could have to do with binding us.

The WITNESS: I have not a very distinct recollection of what was said on that occasion about the matter last enquired about. I have an impression, however, and I think I am not mistaken in it, that he stated——

(The impression of the witness objected to by Mr. Otterson.)

According to the best of my recollection, and I think I am not mistaken about it, Col. Mason said he admitted that Everitt's patent—

Mr. OTTERSON: I would rather not have what Col. Mason admitted. I prefer to have the facts, or to have a statement of what occurred at the time of the meeting, when we will see whether they amount to facts.

Mr. BOWMAN (to the witness): Please state in your own way what took place on that occasion.

A. Col. Mason stated or admitted that in his opinion substantially Everitt's patent was doubtless a valid one, but subordinate, of course, to the Stark patent.

Cross-examined:

Q. You were one of the solicitors of Mr. Everitt in obtaining this patent, were you not?

A. Yes, sir; the firm of which I am a member procured the patent for him.

Q. Where is your office, your individual office, if you have one separate from the firm?

A. At 424 Walnut street, Philadelphia.

Q. And your firm office?

A. It is the same thing. Our firm has also an office in Washington, 730 5th street.

Q. Were you in constant communication with Mr. Everitt pending the application for the patent or the proceedings thereon?

A. I do not know what you mean by constant. When the application for a patent is made it is usually some considerable period of time, perhaps on an average fully a month, before any official
326 action is had. During that period of time it is not customary to hold any communication with the inventor and applicant unless he should call to inquire about the status of his case.

Q. Did he do that frequently?

A. I do not remember; I think, however, in point of fact, I feel quite certain of that, that he was kept fully advised of the official action on his case.

Q. All the way from the application originally until the patent was granted?

A. Yes, sir.

Q. Do you remember that the application was rejected?

(Objected to by Mr. Bowman, first, because the question is irrelevant to the point at issue; and, secondly, because it is not cross-examination.)

A. Before I answer that question I would state——

Q. I would prefer you would answer the question and make any explanation you choose afterward.

A. I do not intend to answer it, and I will state my reasons for not answering it; it is, that in procuring that patent for Mr. Everitt I acted for him in a professional capacity; any matters that passed between him and me then were, of course, confidential, and until I should have his permission to disclose those matters I shall decline to answer any question in regard to them.

Q. You refuse to answer the question then, and are satisfied to put it on that ground; I am not going to make any war between you and myself about anything that you elect to do.

A. I make a qualified refusal that unless I shall have obtained Mr. Everitt's permission to answer in regard to any professional matter between him and me, I shall, of course, decline to answer the question; personally, I have no objection to state all that I remember about the matter.

Q. I repeat the question: Do you remember that the application was rejected several times?

Mr. BOWMAN: I renew my objection to that question, because the question has nothing to do with the point at issue, and because it makes no difference whether this patent was rejected ten thousand times, while the fact remains uncontradicted that the patent was issued by the United States Government as a valid patent.

The WITNESS: I decline to answer the question for the reason already stated.

By Mr. OTTERSON:

Q. Did you notify Mr. Everitt of the fact that his patent was rejected, as those rejections severally occurred?

A. I decline to answer that question for the reasons given to the former questions.

Q. Do you know upon what ground the application for the Everitt patent was rejected?

Mr. BOWMAN: I did not object to the other question, but I now desire a general objection entered to the whole line of this examination; the witness has not said that it was rejected, and I do not think an answer can be got out of him on that subject without such an admission.

Mr. OTTERSON: I do not think I can get an answer out of him, but I propose to put my questions.

The WITNESS: I shall not disappoint the cross-examiner's just expressed expectations, and therefore I shall decline to answer the question for the reason already given.

Q. Was it not upon the ground that the Stark patent, and others, covered the precise ground claimed by Mr. Everitt's application?

A. I decline to answer that question for the reason that I have already given and many times repeated.

Q. Did you not report to Mr. Everitt that his application was rejected because of the existence of the Stark and other patents covering practically the same ground?

A. I continue my refusal to answer any question of that character.

Re-examined:

Q. How long have you been in the profession making a specialty of patent cases?

A. For a period of about ten years.

327 Q. Have you been in active practice during the whole of that time?

A. Very nearly the whole time, without interruption or intermission of any character since the year 1872.

Q. Is it not almost always the rule in the experience of patent lawyers to have applications for patents rejected when first presented? I mean by that is it not an ordinary thing to have an application for a patent rejected and the same patent be afterward accepted?

(Objected to by Mr. Otterson because not a proper subject for re-examination.)

A. I should say that so far as my experience goes—and that experience relates not only to practice as a solicitor of patents, but is also derived from nearly three years' experience as assistant examiner in the Patent Office, that there is not, perhaps, one application in twenty presented to the Patent Office which does not meet with what is ordinarily known as a rejection; that is to say, a refusal to allow the patent on the claims precisely as originally presented.

ELISHA E. EVERITT recalled and examined by Mr. BOWMAN:

Q. You have heard the testimony of Mr. Henry S. Hale with reference to the springs and bottoms connected with your bed, have you not?

A. Yes, sir.

Q. Please state whether or not these spring bottoms are manufactured for your patent bed and improvements.

A. They are.

Q. State whether or not the bottom is a part of your bed, and whether it is covered by your patent.

(Objected to by Mr. Otterson.)

A. My bedstead is not complete without a bottom of some kind. You could not use it without a slat bottom or a spring bottom. The outside casing would not bear the weight of one man without mashing right through. It has to have a bottom of some kind, and the specifications of my patent call for either a slat or spring bottom in the bed.

Q. (Paper shown witness.) What paper is that?

A. This is a circular of the Hale & Kilburn Manufacturing Com-

pany; a circular and supplement with a drawing in it, and two engravings of the spring-bed bottom, showing the difference between it and other beds.

Q. Engravings of the spring-bed bottom for what bed?

A. The one pinned in the book and marked "No. 3" is the spring bottom manufactured for that bed.

Q. Where did you get this pattern of the spring bottom for your bed?

A. I copied it as it was as they put them in the bed.

Q. What does this wood-cut in the circular just over the drawing of the spring bottom for your bed represent?

A. That represents a spring-bed bottom for an ordinary stationary bed, and the one pinned in there, the drawing, is the spring bottom for a folding bed made expressly for it. They do not use that kind of a spring bed in a stationary bed; it is not made in that way.

Mr. BOWMAN: I offer in evidence the circular and supplement with the tracing pinned to it.

Mr. OTTERSON: I object to the offer of the circular and supplement with the tracing pinned to it, because the tracing is not a part of the circular and supplement. I do not object to these matters being offered separately and being called by their proper names, but one is the defendants' circular and the other is not.

(The circular, supplement, and tracing each respectively marked "No. 68, Jan'y 26, 1880, R. A. W.")

By Mr. Mr. BOWMAN:

Q. What is that circular?

A. That is a circular of the Hale & Kilburn Manufacturing Company, distributed by them at the State agricultural exhibition last fall, 1879. The front page has got the date of my original patent on, and the dates of the improvements made on my patent. There is a price list, and in the list they say they sell no Champion folding bedsteads without spring bottoms. It is mentioned here to
328 be the Champion folding bedstead and crib, "the Everitt bedstead" in very small letter. Then there is a supplement and circular of the "new Champion automatic folding bed and crib," which is a supplement to the circular, and was given out by their salesmen—and you will find the cuts. There is their trade-mark on the frontispiece of looking-glass fronts, as they made them and sold them, "No. 3, looking-glass front;" "No. 12, looking-glass front;" "No. 15, looking-glass front."

Q. Where did you get the small slip containing the spring bottoms as manufactured for your bed?

A. I had it made by a draughtsman.

Q. Is it a correct representation of the spring bottoms manufactured for your bedstead?

A. It is. They put in some spring bottoms besides those, but the majority of them are used in the bed. When they put in the other they have to alter it, as there is saddles for the cross pieces to rest in, and no stringers running lengthwise under the cross bars, the same

as are in the ordinary spring bottom, and some of the cross bars they have have a notch in the end to fit over a button, recently.

Q. Is it true that you agreed not to charge any royalty on the spring bottoms applied to your bedstead and its improvements?

A. It is not true.

Q. Did you ever make any agreement with Henry S. Hale, or any of the defendants, that the spring bottoms might be deducted from your royalty?

A. I never did.

Q. Please state what you have done on the beds, or rather tell me the numbers of the beds, which the defendants claim are not covered by your patent.

A. No. 16 is one, and I think 17 or 18. They did awhile refuse to pay me royalty on the Nos. 10 and 11, but afterward they did pay it; but there is no particular bedstead which they make, or have made feom the commencement up, that does not have some of the improvements combined with mine in order to make it a bedstead. There is not a bedstead that does not have improvements belonging to my bed.

Q. Then they are all simply improvements on your patent?

A. Yes, sir.

Q. You have heard the testimony of Mr. Henry S. Hale as to the defendants paying the rent for the Chestnut street store which you occupied. Was that true or not?

A. It is not true. I always paid my own rent, and got the receipts for it.

Mr. OTTERSON: We will admit that to save time.

Mr. BOWMAN: You will admit that he paid his rent, and got receipts for that?

Mr. OTTERSON: We will admit that he paid his rent; we only insist that he got the money from us with which to do it.

By Mr. BOWMAN:

Q. You heard what Mr. Hale testified to as to your owing them $2,100 at the end of the year, in which you occupied that store. Is that correct?

A. That is not correct. Before the end of the year I paid them $2,380, and I have receipts to show where I paid it, and I have not got them all at that. At the end of that year they owed me money.

Q. You heard the testimony of the same Mr. Hale as to the deduction from your royalty of $160 and some dollars for one-half of a fee which was paid to Mr. Harding and somebody else, attorneys?

A. Yes, sir.

Q. Did you ever agree to pay any part of that bill?

A. Not one cent of it.

Mr. OTTERSON: I object that this is not a proper subject for rebutting testimony, inasmuch as it is a simple repetition of what the witness has already said in his first examination-in-chief, and we might prolong this examination indefinitely if we are going to examine witnesses simply to restate what they already did state.

Mr. BOWMAN: All that I can say in reply to that is, that Mr. Otterson's recollection of the testimony and my own does not
329 agree. I have been careful to read the testimony-in-chief, word for word, and I have notes before me of those matters which were not touched upon by Mr. Everitt in chief.

Q. You heard the statement of the same Mr. Hale, in his testimony, that you agreed with him that your royalty should be settled upon the basis of the lowest wholesale price. Please state whether that is true or not.

A. It is not true. I never had any agreement of that kind. My agreement shows that.

Q. Was there ever any other agreement between you and the defendants on that subject, excepting as specified in the articles of agreement between you?

A. Never. I will here state that when that agreement was drawn up they *was* in the wholesale manufacturing business to the trade. They made and sold to the trade, and my prices *was* based on the prices that they *was* to obtain from the trade. Mr. Kilburn was at that time a member of the firm of Kilburn & Gates, and my furniture was to be sold precisely as they sold others'—to the trade, not to special agents or their own stores.

Q. You heard what the same Mr. Hale testified to with reference to your having asked about the Stark patent. Were you ever asked to purchase that patent, as stated by him?

A. Not as stated by him. I was asked. The first time I was asked to buy the Stark patent was on the tenth day of May, 1878, at the Permanent Exhibition, in West Philadelphia, by Mr. Kilburn. Mr. Harry S. Hale refused to pay me my money, due then, and referred me to Mr. Kilburn, and I had to go to the Permanent Exhibition to see him; and there he said that Stark would take $30,000 for his patent, or would take five per cent. royalty, and let us go on and make the Everitt bed. I said I had nothing to do with Stark. Well, he said, he was not going to pay Stark five per cent. royalty and me seven. They never asked me, between the first of February and the tenth of May, to buy that royalty for $1,000. They *was* very careful to keep it from my hearing. Not one of them told me.

Q. Is that all in that connection?

A. Mr. Kilburn told me, on the tenth day of May, that he had been to Washington, and had seen the Stark agent or attorney, Mr. Mason, and that Mr. Mason told him he would either sell it for $30,000 or take five per cent. royalty and let us go on and manufacture; and he refused to pay me my money, saying he would not pay Stark five per cent. royalty and me seven. I would state that I am very positive—and there is not one of them that does not know it—that they never told me Stark offered to sell his patent for $1,000; not one of them. They *was* very careful to keep it out of my hearing. I requested Mr. Warren Hale, when Stark returned from Washington, to let me know, that I could see him when he came back, and was here for nearly eight months; and they *was* very careful to keep him out of my sight.

Q. Did you have any talk with the defendants about the rate of discount which they were deducting from you in their settlements with you?

A. Yes, sir; so far as this, as the discount to the trade, which I—what I am alluding to.

Q. Do you mean by that to their stores?

A. No, sir; to their trade here in Philadelphia. I was well acquainted with many of the furniture dealers about town, and they all knew it was my bed, and they were at me to know why they could not get more than 10 per cent. discount. They would only allow the men 10 per cent. off, and the furniture dealers could not take hold of the bed for that money, and they asked me why they could not get more. I asked them, and one day I found out that they were taking 25 per cent. off. I said I was glad of it, and I went and told some parties that they could get the beds 25 per cent. off. They went to the firm, and the firm would not allow them to have them, and they were selling them to their own stores and their own agents at 25 per cent. discount.

Q. You have heard the testimony of Henry S. Hale about their allowing as much as 20 and 43 per cent. off to the Toby Manufacturing Company, in Chicago?

A. Yes, sir.

330 Q. Will you state what you know about that?

A. I did not discover it in any of their books until after we got through here and went up to examine the books in the office, and there we found entries of sales to Mr. Toby of thirty-three and one-third per cent. off. There are only two, I think, over in the books, and they were in February, 1879. We took up to March 7, 1879.

Q. You found these entries made in the defendants' books after these proceedings commenced, and while the investigation was going on before the master?

A. Yes, sir; and I discovered two entries there, over thirty-three and a third off—I think but two—and they were in February and March.

Q. You heard what the same Mr. Hale testified to about the letter of April 10, received from Mr. Mason in Washington?

A. Yes, sir.

Q. Will you state on what day you saw that letter at the store of the defendants?

A. I saw it about 10 o'clock on the morning of the tenth day of April, 1878. It was shown to me by Mr. Harry S. Hale and Mr. Kilburn.

Adjourned until Friday next, January 30th, 1880, at 3 p. m.

PHILADELPHIA, FRIDAY, *January* 30, 1880.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of E. E. EVERITT resumed by Mr. BOWMAN:

Q. I believe the defendants, in their account with you, deducted the cost of a washstand erected for the Centennial Exhibition in connection with the exhibit here. Did they make the deduction from your account?

A. They made a deduction for other things, but not for a washstand. They claimed that they made a washstand for me, but it was true.

Q. You heard the testimony of Cheney Kilburn as to your ordering a washstand?

A. I never ordered a washstand from them in my life. The way that was I had a patented washstand and desk, and they made an agreement with me, which agreement I have now. I saw them and they got Mr. Howson to draw up the agreement. After it was drawn up Mr. Kilburn refused to sign it, and that was the washstand he alluded to. They made it for themselves, and kept it themselves. I never did anything of the kind, and he knows it. I had not one cent's worth of furniture on that stand at the Centennial; but the time that stand was taken I held the patent of it, and they had not made the agreement. The space that was taken for that stand was taken a year previous to the opening of the exhibition, and between that time and the time of the opening Mr. Kilburn made an agreement with me to take the stand himself and manufacture it, which agreement I will show. Mr. Kilburn ordered this agreement drawn up by Howson & Son, which was done, and I asked Mr. Kilburn to sign it, and he kept putting it off, and finally he entirely refused to sign it. I had taken a full-sized model of the washstand to their factory for them to work by, and they had it there for at least four or five months, and then they finally refused to close the agreement.

Q. I think, from the testimony as it appears now, it will give the impression that the defendants commenced the manufacture of your bedstead during the first four months after they signed the agreement. Please state what the real fact is about that.

A. In my testimony-in-chief I say the first four months of manufacture—not the first four months after the signing of the agreement. There was no bedstead made or offered for sale until September of that year. I am led to say, in my testimony-in-chief, that I think I was paid in full. I think so—I am not certain—for the first four months. Mr. Otterson makes it appear that there were no beds made the first four months. I mean the first four months of
331 of their manufacture—September, October, November, and December. Not the first four months of the year, but the first four months of their manufacture.

Q. September, October, November, and December of 1874?

A. Yes, sir.

Q. Being, in point of fact, the last four months of the year?

A. Yes, sir.

Q. You heard the testimony of the witnesses for the defendants as to the value of your bedstead and improvements. Will you state whether your patent, and the improvements upon it, have received medals at various exhibitions in this country and abroad?

(Mr. Otterson objects.)

A. They have received premiums, medals, and diplomas wherever exhibited in this country. Some of them have my name on them, and one in particular I remember, which was received at the first exhibition it was ever exhibited—the Franklin Institute Exhibition of 1874. It received the highest premium at the Centennial for a folding bed, which premium they are advertising now, and have been ever since the exhibition.

Q. Where are those medals, &c.?

A. They are in the possession of the company.

Q. The defendants?

A. Yes, sir; at least I suppose so.

Q. Were they the last time you knew anything about them?

A. They were.

Q. Whose advertisement is this? (A copy of the Philadelphia Record of Saturday morning, January 24, 1880, handed to witness.)

A. It is the advertisement of the Hale & Kilburn Manufacturing Co., and contains an engraving of my bedstead at the head of it. It is just such an advertisement as they have published for the last five years, to my knowledge, and, if necessary, I could produce two hundred thousand of those advertisements, which they have published within the last month. It was the only bed that took the premium at the Centennial Exhibition, and that fact is published now in connection with their other advertisements.

(Mr. Bowman offers in evidence the copy of the "Record" referred to, merely as proof of the advertisement, marked by the examiner "No. 69, January 30, 1880, S. G. W.")

Mr. Bowman: I now call upon the defendants to produce all the medals and awards of merit granted to Mr. Everitt.

Mr. Otterson: I can only answer now that they are not present, this intimation being the first I have received on the subject.

Cross-examined by Mr. Otterson:

Q. You said in your recent examination that you paid the rent of your store in Chestnut street yourself?

A. I did.

Q. Where did you get the money?

A. I got some from Hale & Kilburn. Where did I get my money before I got the store if not from Hale & Kilburn?

Q. I am not under examination now, and it is not for you to ask questions. It is for you to answer them. How did you pay that money back again?

A. My royalty paid it.

Q. As you got the money.

A. As it came due.

Q. Did your royalty pay the debt as you got the money?

A. Sometimes I paid doubly what I received, and sometimes it did not pay up to the amount I received.

Q. I am speaking now of the money you received from them, with which you paid your rent of the Chestnut street store. Were the

royalties due you at the time you got the money for that purpose, or do you not know that they were not?

A. I don't think that they were in the fore part. In the latter part my royalties amounted to more than what I received.

Q. Did your royalties, during the time that you occupied the Chestnut-street store, amount to enough to pay to the rent of that store?

A. I do not think they did.

332 Q. I am speaking about the money you got for the payment of the rent. Then it was loaned to you by Hale, Kilburn & Co., as they did not owe it to you?

A. They loaned me so much money on notes. I have the notes here if you want to see them.

Q. They loaned you the money?

A. Yes, sir.

Q. And they did not owe it to you?

A. Yes, sir; they did owe me some.

Q. Then it is correct that you were in their debt on that account?

A. I was in their debt, but not to the amount that Mr. Hale says I was.

Q. You said, when you were examined the last time, that you did not owe the money, and that it was not true that you were in their debt?

A. At the end of the year I did not owe them, I said.

Q. You borrowed the money?

A. I did.

Q. Now, was not the money you paid them, and for which you exhibited their receipts, during your last examination, the money which you had received for beds which you sold while acting as agent for them?

A. No, sir; Oh! no. The receipts will show for themselves. I have got the bills and receipts. These are different receipts altogether. (Producing a package of papers and handing same to Mr. Otterson.) I can show all the receipts for goods I bought of them, or sold for them, every month while occupying that Chestnut-street store.

Q. And these receipts have nothing to do, then, with your agency in selling the bedsteads or other goods for them? (Referring to the package of papers produced by witness.)

A. Not that I am aware of. When my money for royalty came due, instead of receiving the royalty, they kept the money and gave me a receipt for it.

Q. On moneys they had advanced to you previously?

A. Yes, sir; those are the receipts.

Q. Have you any more of these receipts?

A. I have no more of them here. I have the receipts for the rent which they say they paid, but which I paid. (Producing another pakage of papers and handing the same to Mr. Otterson.)

Q. These are the notes you gave to them when they advanced you the money from time to time to pay your rents. (Referring to papers produced by witness.)

A. Yes, sir. Let me explain right here. When I took that store I was afraid that my royalties——

Q. What have we got to do with that?

A. I wanted to explain how I gave those notes.

Q. You gave them for borrowed money, did you not?

A. Yes, sir; I did.

Q. We do not care anything about your store or anything about your house.

A. They said they paid the rent, and I say that they did not.

Q. If you have an explanation to make with reference to these notes and the borrowing of that money, I have no objection to your doing so, but I do not want to know the history of your business in Chestnut street.

A. Well, I have an explanation to make. I told Mr. Kilburn, when I took that store, that when my royalty did not amount to enough to pay the rent, probably I should require money to be advanced, and he told me that any time I wanted money I should come there and get the money; that he would advance me the money and withhold my royalty; but all the money which is represented by those notes was not used for paying my rent.

Q. But it was money you got from him?

A. I got money from him, but I used some of it for other purposes, and I used other money of mine with which to pay the rent; so that it was not all advanced by them.

Q. To pay the rent?

A. No, sir.

Q. What did you pay for your store in Chestnut street?

A. $2,250, I think it was.

333 Q. When did you take it?

A. I think it was the 21st of June, 1875.

Q. How long did you occupy it?

A. About one year. I paid one year's rent on it.

Q. Did you pay rent monthly?

A. Yes, sir; I generally drew my rent monthly for that store.

Q. From whom?

A. From Hale, Kilburn & Company, whether it was used for that purpose or not, so that I could calculate pretty nearly what I owed them. My receipts show that I paid $2,380 up to the 11th of October, when they were holding those notes.

Q. Your testimony-in-chief would look as if you intended to convey the impression that you had not only repaid the defendants the twenty-one hundred and odd dollars which they had advanced to you, but that you had paid them $2,380 more than that, so that they were in your debt. Do you mean to convey that idea?

A. No; I mean to convey the idea that they were in debt to me at the end of January, 1877, when they say they held notes of mine to the amount of $2,150. Their notes were all paid off, and they owed me money at that time, which their receipts in their receipt book will show. Mr. Kilburn says that I owed it for nearly two years. That is false, for I did not.

Q. Then you did owe them $2,100 at one time?

A. I never owed them $2,100 in my life, and they know it; nor the half of it. I may have owed them the half of it, but never $2,100.

Q. Do you mean to say that they owed you, at the end of 1876, the difference between $2,100 and $2,380?

A. I do not mean to say that either, because they paid me some money. Along in January, 1877, they owed me money instead of my owing them.

Q. How much did they owe you?

A. They owed me over $100, I know.

Q. How do know that?

A. I am positive of it. The receipts will show it; and I recollect very well a dispute about giving that receipt for that amount of money. I contended that I was not getting what belonged to me, and I refused to sign a receipt in full until Mr. Roberts and Mr. Kilburn and Mr. Noblit all told me that I could go back on a receipt in full, if it was not right, and then I signed it.

Q. From the beginning of your transactions down to about this time, say January 1st, 1877, is it not true that you went to the defendants and drew money from time to time, irrespective of the condition of the accounts between you, gave your notes for the accommodations, and from time to time received back again receipts on account of your royalties, which receipts would operate against the notes you had given from time to time, and that the accounts between you, arising out of this state of the transactions, were settled only about the first of January, 1877?

A. They kept my royalties, and gave me receipts for my royalties. For instance, if my royalty was $100, I went in there and gave them a receipt for the $100, and they gave me a receipt for it to be paid back again; so that I had something to show that I had paid so much money into that concern. Those are the receipts which I had just showed you. In January, 1877, I did not owe them one cent. They owed me, and their books will show it.

Mr. OTTERSON (to the stenographer): Read the question to the witness.

The STENOGRAPHER (reading): "Q. From the beginning of your transactions down to about this time, say January 1st, 1877, is it not true that you went to the defendants and drew money from time to time, irrespective of the condition of the accounts between you, gave your notes for the accommodations, and from time to time received back again receipts on account of your royalties, which receipts would operate against the notes you had given from time to time, and that the accounts between you, arising out of this state of the transactions, were settled only about the first of January, 1877?"

334 By Mr. OTTERSON:

Q. Will you state whether that is true or not?

A. Yes, sir; up to the 1st of December, 1876. But I had received from the defendants, in that interval, money besides that which is represented by these notes.

Q. You say that they owed you how much at that settlement?

A. They owed me over $100; I cannot tell you exactly how much. The first amount they named I refused to accept, and afterwards Mr. Roberts made out an account of seventeen or eighteen dollars more, and I accepted it on account.

Q. Then, on the 1st of January, 1877, you claim that they owed you about $117 on account?

A. It was more than it.

Q. How much was that?

A. It strikes me that it was in the neighborhood of $130.

Q. What was it you received which was satisfactory; you received something, you say?

A. The first amount that they made out was not satisfactory.

Q. But afterwards they advanced the amount and made it satisfactory, as I understand?

A. They advanced part of the way. They did not advance to what I wanted.

Q. But so far as they went, was it accepted by you as being satisfactory at that time?

A. It was accepted, but it was not satisfactory.

Q. Was it accepted as being satisfactory?

A. No, sir; it was accepted, but not as being satisfactory, and Mr. Kilburn knows that.

Q. I am now trying to find out what you know.

A. That I know.

Q. Do you know the line of business in which Kilburn & Gates were engaged?

A. They were manufacturers of cottage furniture.

Q. They did not make any bedsteads except cottage bedsteads?

A. They made bedsteads.

Q. Will you answer my question just as I put it?

A. I will.

Q. Then please do so. Did they make any bedsteads except cottage bedsteads?

A. Not that I am aware of.

Q. Did they deal in any bedsteads that you are aware of, except cottage bedsteads?

A. I know that they dealt in bedsteads made by Reeves & Eastburn, and in bedsteads made by Alfred Horner

Q. Were those cottage bedsteads?

A. I think they were. I know that they sometimes bought from those firms.

Q. They did not sell our folding bedstead?

A. They had them advertised in their catalogue. I don't know how many they sold; and I think that they have them advertised now.

Q. Who have?

A. Kilburn and Gates—or had. Kilburn is not in the firm now.

Q. What do you mean by saying that they advertise them now, when the firm has been out of existence for years?

A. I made a mistake. They advertised them in their catalogue some two or three years.

Q. Kilburn and Gates?

A. Yes, sir; and I think Gates & Co. advertised them. That is the old firm of Kilburn & Gates. It is Gates & Co. now, and there is a possibility of my being mistaken about the two firms, and as to whether they both advertised. I know one of them did, and, if necessary, I will produce the catalogue.

Q. Do you not know that the firm of Kilburn & Gates has been out of existence for two or three years?

A. I know that; yes, sir.

Q. While they were in business together, did you ever know them to sell the folding bed, or to have one in their place?

A. I know that they made them, and I knew them to have them in their place.

335 Q. They made them?

A. Yes, sir.

Q. Where did they make them?

A. In Vermont.

Q. Folding beds, after your patent?

A. Yes, sir; so Mr. Kilburn said.

Q. When did he tell you that?

A. I think it was in 1875 that they had a lot made of these.

Q. Who had a lot made?

A. Hale, Kilburn & Co. had a lot made by Kilburn & Gates.

Q. What was done with them?

A. I believe that they were sent from the factory in Vermont direct to their branch store in New York.

Q. Kilburn & Gates were not manufacturing them for their own sales?

A. They made them.

Q. But the question is whether they made them for the purpose of dealing in them?

A. I think they made them for Hale, Kilburn & Co.

Q. Did they make them, or deal in them as a part of their own business?

A. I do not know; but I know that they did sell them, or offered them for sale to their customers, when they had an opportunity here in their city store.

Q. To whom did they offer them for sale?

A. I do not know, but I know that they were advertised in their catalogue.

Q. Can you produce that catalogue.

A. I will try to do so. I get confused between the two firms; but it is advertised either in Gates & Company's catalogue, or in Kilburn & Gates' catalogue.

Q. Did Kilburn & Gates advertise these beds in their catalogue as a part of their business? Is that what you mean?

A. Yes, sir; they advertised them for sale. I do not know whether it was a part of their business or not, but they advertised those beds for sale.

Q. Do you not know that it was Hale & Kilburn's advertisement that was simply in their catalogue offering these things for sale at their place on Sixth street?

A. That might have been the case, but I never saw catalogues gotten up in that manner.

Q. Will you produce the catalogue?

A. I will try to do so. It might possibly be that I am mistaken.

Surrebuttal Testimony.

SAMUEL N. NEWCOMB, called by defendants, sworn and examined by Mr. OTTERSON.

Q. What is your business?

A. Superintendent of the Hale & Kilburn Manufacturing Company.

Q. How long have you been so engaged?

A. Between five and six years.

Q. Did you ever know Andrew Stark?

A. I have seen him.

Q. Where?

A. At the factory.

Q. Can you tell when?

A. It is two years ago, I should think, or nearly that. I think it was in 1878.

Q. Did you know Asher B. Stevens?

A. Yes, sir.

Q. Did Asher B. Stevens ever talk with you about Stark's patent for folding beds, and show you designs or drawings of the bed, or parts of the bed?

A. Yes, sir; I think he did.

Q. Where was it?

A. In my office.

Q. Where is that?

A. On the third floor of the front building.

Q. Do you know when that was?

A. It was at the time that Mr. Stark was at our place.

Q. When did you first hear or know of Stark's bed?

A. When Mr. Stark came there to make some drawings.
336 That was the first I knew [of] him; and then Mr. Stevens told me that he had a claim or patent on the bedstead?

Q. You never knew anything about it, then, until after you had seen Mr. Stark personally?

A. I had never heard of Stark until I saw him.

Q. And your conversation with Mr. Stevens and the time of his showing you the drawings was subsequent, then, to your knowledge of Mr. Stark personally?

A. Yes, sir. The drawings were in the book of reports from the Patent Office.

Q. Do you know how he came to call your attention to the drawings?

A. He was going into experiments with folding beds.

Q. You mean Mr. Stevens?

A. Yes, sir.

Q. Can you say definitely whether this interview between Mr. Stevens and yourself, in which these drawings were exhibited to you, was before Mr. Stark appeared at all at the place, or whether it was after he appeared there?

A. It was after Mr. Stark appeared there.

Cross-examined by Mr. BOWMAN:

Q. When did you first see Mr. Stark?

A. It was in the winter of 1878; I could not give the date.

Q. Where did you meet him?

A. On the stairs, going into the designers' room.

Q. In the defendants' place of business?

A. Yes, sir.

Q. Can you tell in what month it was?

A. It was in January, but whether it was one month after or two, I cannot tell. It was after New Year, 1878, because my year commenced at New Years, and it was after I commenced another year.

Q. Had you any knowledge of him before that?

A. I had never heard of him that I know of.

Q. Have you ever heard the defendants, or any of them, speak of him or about his patent?

A. No, sir.

Q. How long had you known Mr. Stevens previous to your seeing Mr. Stark?

A. I should think I had known him a year and a half.

Q. Previous to your seeing Mr. Stark was not Stevens experimenting on bedsteads at the defendants' place of business?

A. No, sir; I think not. He was on chairs altogether.

Q. You are not positive about that, are you?

A. I am as positive as I am of anything that took place as long ago as that. I would not swear that he never bothered himself about bedsteads before that, but that was the first time that he had ever done any experiment, to my knowledge.

Q. When was the first time?

A. When Mr. Stark was about there.

Q. When did he experiment on bedsteads, to the best of your recollection?

A. For a month or more he was experimenting on bedsteads.

Q. Was it not during the months of January and February, 1878?

A. I should not think it was as early as January.

Q. You are not quite positive about that?

A. I would not swear that he did not do anything about bedsteads, but he did not do anything about bedsteads to my knowledge. He did not come and bother me about them until Mr. Stark came there.

Q. When you say that he did not do anything about bedsteads to your knowledge, you mean that he did not bother you about any bedsteads?

A. He did not say anything to me about them.

Q. When did you first hear of the Stark patent?
A. When I saw Mr. Stark.
Q. Who told you about it then?
A. Stevens, I think. I would not swear who told me about it first.

337 Q. Do you remember when you first saw the plans and drawings of the Stark patent?
A. Yes, sir.
Q. When was it?
A. It was at the time Mr. Stark was at the factory.
Q. When was that?
A. It was in the winter of 1878.
Q. In what month?
A. It was after January.
Q. How long after January?
A. I have nothing to fix the particular date, except that he was making a drawing of a reaper and binding machine and explaining it to me. He said that he had to get out the machine and have it ready for the spring business, so that he could get it into the market for the summer business. I know it was quite early in the season, but I could not say whether it was February or March.
Q. That was when you say you saw the plans and drawings of the Stark patent?
A. Yes, sir.
Q. Was Stark present?
A. He was not.
Q. Where was he?
A. I do not know where he was. He was in and out, and occasionally I saw him, as he used to come in every few days, and wanted to get into my designers' room to alter his drawings or his plans.
Q. Why are you able to say positively that you did not see the drawings and the plans of Stark's patent until after Stark came on here?
A. Because I never heard of Stark until I saw him.
Q. You might have seen the drawings and the plans of the patent claimed by him without hearing of him personally, might you not?
A. I think not. I might have seen them, but my attention was never called to them. I never noticed them, and I never knew there was such a patent in existence.
Q. If your attention had been called to the drawings and specifications of a patent before Stark came on you would have had no interest in it, would you?
A. I took a great deal of interest in the folding beds, because I was making them.
Q. Would you have had sufficient interest in looking at drawings and plans of a folding bed to note down the fact so as to specially remember about it?
A. If I thought there was anything worth looking after I would.

Q. Well, did you note that specially in your memory when you saw the plans and specifications of the Stark bed?

A. Yes, sir; I looked after it to see what there was in it.

Q. Then you did make a note of the time when you first saw these plans and specifications?

A. Not a memorandum of it.

Q. Did you fix it in your mind—was there anything about the circumstance which caused you to have it impressed upon your mind so that you could recall it three years afterward?

A. All I have to fix it in my mind is the fact of Mr. Stark's being there and being around there so long, and Mr. Stevens bothering me about the improvements he intended to make, which would do away with Stark's, Everitt's, and everybody else's patent; he was going to have a bedstead that would knock everything.

Q. Did you hear what the defendant said about getting up some improvement that would knock everything?

A. They never had any conversation with me about their patent, unless it might be some general remark, but it was nothing to call my attention particularly to it.

Q. After seeing the drawings of the Stark patent when had you your attention next called to that fact?

A. I should think it was a month or two afterward—in June.

Q. By whom?

A. Stevens.

Q. What did he say.

A. He said Stark's patent did't amount to anything, and that he could do as well without it as anybody.

338 Q. You do not understand my question; I have been referring to the fact of your seeing these drawing and specifications of the Stark patent; my question now is, when was your mind next directed to the fact of the time when you saw those specifications and drawings; was it ever afterwards directed to the point of time when you saw the drawings and specifications of the Stark patent?

A. I think it was soon after Stevens left us.

Q. Who called your attention to it?

A. Mr. Harry Hale.

Q. What for?

A. He wanted me to work out some drawings that he had.

Q. Who had—Mr. Hale?

A. Yes, sir.

Q. How did that remind you of the specific time when you first saw the drawings and specifications of the Stark patent?

A. It brought to my mind the fact of Mr. Stark being there.

Q. But did it bring to your mind the particular time when you first saw the drawings of the Stark patent?

A. No, sir; I think not.

Q. When first did any one call your attention to the specific time when you first saw those drawings and specifications?

A. I do not know that I get the bearing of your question.

Q. I will try to make it intelligible, if I have not done so; you have stated that you saw the drawings and specifications of the

Stark patent after Stark came on here first, in 1878, and that Mr. Stevens showed them to you after he came on; now, I want to know whether, and, if so, when, your attention was ever directed to the point of time when the drawings and specifications were shown to you by Mr. Stevens?

A. I do not know that it ever was until I was asked the question to-day as to whether I remembered the time.

Q. Then, you were spoken to about it to-day for the first time, and it was in connection with your being called here as a witness, was it not?

A. I suppose so.

Q. You suppose so; don't you know so?

A. He did not tell me that he wanted me as a witness when he asked me the question.

Q. Who asked you the question?

A. Mr. Kilburn.

Q. You knew that you were to come here as a witness?

A. I did not.

Q. How did you get here—accidentally?

A. I did not know it until after he had asked me that question.

Q. What question did he ask you?

A. He asked me whether I remembered the time when Mr. Stevens had a conversation with me about the Spark patent.

Q. He told you what Mr. Stevens had testified to, did he not?

A. Yes, sir; I believe he did.

Q. And it was talked over between you?

A. There was very little talk we had.

Q You talked about it?

A. Yes, sir; I think.

Q. You think so?

A. Yes, sir; we did.

Q. This occurred to-day, and you can speak positively about what took place to-day?

A. Is not that positive?

Q. Yes, sir; now, if you made no note of the fact in your mind and no memorandum, how are you able to speak so positively here to-day as to the precise time when you saw those drawings and specifications?

339 A. The way I fix it in my mind is by Mr. Stark being there and Mr. Stevens commencing to work on bedsteads while Stark was there, and the fact that he then began to call my attention to this pattern, and that pattern, and to his pattern and his improvements while Mr. Stark was about the place back and forth.

Q. Then you fix it because you think it is impossible that you heard of the Stark patent before his coming on herein. Is the reason you fix it because you think it improbable that you should have heard anything connected with Stark until after he came here himself?

A. I had not heard of anything.

Q. Did you ever hear of these defendants writing to Stark,

through Stevens or any one else, to know whether Stark lived out West?

A. No, sir.

Q. You do not know that they had been communicating with him before he came on here?

A. No, sir; they mentioned him to me.

Q. But you do know that Stevens did show you the drawings and specifications of the Stark patent?

A. Yes, sir.

Q. And you do know that that was the first time you ever saw them, do you not—when Stevens showed them to you?

A. That was the first time I ever had my attention called to them, or knew anything about them. I might have seen them, the same as looking over the patent office reports, as I frequently do, without paying particular attention to them. There is only a small cut in the reports, and it is very imperfect.

Q. And I suppose Mr. Stevens might have called your attention to them in a general way in connection with other things, and you might have looked at them in a general way, without making any note of them?

A. He never troubled me about folding beds until after Stark came there.

Q. I did not ask you about folding beds; you have a very nice way of evading the question. Will you answer my question: Might not Mr. Stevens have shown you these drawings and specifications, in connection with others, in a general way, and you have passed over them in a general way, without charging your mind with them at all, just the same as you say you have examined such things in the patent reports, without specially noticing them?

A. He might have called my attention to it, but he did not—he could have done it, but he did not.

Q. You are now in the employ of these defendants?

A. Yes, sir.

Q. You are a stockholder of the concern?

A. No, sir.

Q. You were?

A. Yes, sir.

Q. How long has it been since you ceased to be a stockholder?

A. I sold my stock about the first of January.

ELLERY B. FOLGER, called by defendants, sworn and examined by Mr. OTTERSON:

Q. You are in the employment of the Hale & Kilburn Manufacturing Company?

A. Yes, sir.

Q. For how long a time have you been so employed?

A. Seven years the first of January last.

Q. In what capacity?

A. As factory clerk.

Q. Did you ever see Mr. Stark?

A. I saw him, but I never spoke to him.

Q. Did you know Asher B. Stevens?

A. I did.

340 Q. Did Mr. Stevens ever talk with you and show you diagrams or drawings of the Stark folding bed?

A. Yes, sir; once.

Q. When was that?

A. I think it was some time after the first of January, 1878; I cannot state the date exactly.

Q. How do you fix that date?

A. I know it was after the first of January, but I cannot tell the date; I know it was two years ago.

Q. How do you remember that it was after the first of January, and not after the first of February or March or June or December?

A. I knew Mr. Stark was making a drawing there for a reaper or something of that sort; I have seen the drawing, but I did not know what it was. At any rate, he was there, and it was, as I say, after the first of January, 1878.

Q. Do you mean to say that at the time of this conversation with Mr. Stevens, when he showed you the drawings of the folding bed, Mr. Stark was then in this city?

A. I couldn't say whether he was in the city, but he had been in the city.

Q. Where had you seen him in the city?

A. I had seen him at the factory, in the designing room, and only there.

Q. Then it was after you had seen Mr. Stark in the designing room that this conversation with Mr. Stevens took place?

(Mr. Bowman objects as leading and as suggesting the answer to the witness.)

A. That I can't say, but it was a day or two after that I saw him; at least a few days after I heard of him in the city.

Q. What passed between Mr. Stevenson and you at that time, and who else was present?

A. There was no one present at all; it was in the third story, in the small office; I am usually there at noon time, and he showed me the cut in the Patent Office Reports.

Q. The cut of what?

A. The cut of the Stark folding bed.

Q. You know that Mr. Stark was either then or had been very recently in the city, and at that counting-house?

A. It was previous to that that he had been there.

Q. Mr. Stark had been here previous to this interview between you and Stevens?

A. Yes, sir; I never heard of Mr. Stark before that.

Q. Did you ever hear of his folding bed before that?

A. Never.

Q. Are you sure that this was not before you had seen Mr. Stark at the counting-house?

(Mr. Bowman objects on the ground that the same question has been asked several times, and objected to as leading, and the witness has answered it.)

A. Yes, sir.

Cross-examined by Mr. BOWMAN:

Q. Can you tell the time when you first saw Mr. Stark?
A. The exact date?
Q. Yes, sir.
A. No, sir.
Q. Can you tell within two months of it?
A. Yes, sir.
Q. When was it?
A. It was after the first of January. I went there the first of January, and I think it was the last of February, but I can't fix the date exactly; I know it was after the first of January.
Q. Then you cannot positively say what month it was after?
A. No, sir; but I know it was either in January or February.
341 Q. Why do you say that?
A. Well, on account of his making this drawing for a reaping machine.
Q. On account of who making the drawing?
A. Mr. Stark.
Q. On account of Mr. Stark's making a drawing for a reaping machine?
A. Yes, sir; in the factory—in the drawing-room.
Q. When was he making that drawing—in what month?
A. That I can't say. In either January or February, but I can't say which.
Q. Why do you say that it was in January or February, if you cannot tell in which of those months it was; is it not mere guess-work upon your part?
A. No, sir; I know it was after the commencement of my year there at the Hale & Kilburn manufactory.
Q. That is the same reason the other witness gave, is it not?
A. Yes, sir; I think it was.
Q. You say that you think it was; did you not sit here and hear him say it?
A. Yes, sir.
Q. Did you talk this matter over with Mr. Newcomb before you came here?
A. Yes, sir; no, sir; that is, I said very little about it.
Q. You say, "Yes, sir—no, sir;" which do you mean?
A. Yes, sir; I did.
Q. Did you talk over as to how you would be able to fix this date?
A. No, sir.
Q. There was nothing said about that?
A. No, sir; there was nothing said about the date.

Q. Then you said that it was in January or February, because your year with the firm commenced in January?

A. Yes, sir.

Q. How does that give you any reason for swearing that it was in either of those two months?

A. Well, I can fix time generally very readily, but not the dates.

Q. I do not want you to give dates; I am asking you to give me the month; I will be satisfied to take a month, and I will give you a range of thirty days to think about; you will not say that it was in January, and you will not say that it was in February, but you say that is was some time in one or the other of those two months?

A. Yes, sir.

Q. Now, I want to know how you swear to that; why do you swear to it?

A. I say, because I fix it in this way: That I know it was after the commencement of my year, and I think it was in the last of January.

Q. That was when you first saw Stark?

A. Yes, sir; it was when I saw him making the drawing, and when I first saw him.

Q. When you first saw him you did not know how my times he had been there to see the defendants before that?

A. No, sir.

Q. Did the defendants ever talk to you about Stark?

A. No, sir.

Q. Did they ever tell you that they were corresponding with him?

A. No, sir.

Q. Did you know that they were?

A. No, sir.

Q. Do you remember hearing Mr. Stevens say anything about him?

342 A. Nothing more than about that drawing in the Patent Office reports.

Q. In what report was it?

A. It was in the Patent Office reports. I can't say the year the report was published.

Q. Who had the book?

A. Mr. Stevens.

Q. Were you looking at other drawings?

A. Not at that time.

Q. Were you before that?

A. Not in regard to folding beds.

Q. I did not ask you about folding beds. I say, were you looking at other drawings?

A. Yes, sir.

Q. In the same report?

A. No.

Q. In the same book?

A. No.

Q. How do you know that if you cannot tell me in what book this drawing was?

A. Well, because I think that the Stark patent——

Q. I do not want what you think; I want what you know.

A. Because the Stark patent is an old patent, and the drawing that he was showing me subsequent to that, or at least previous to that, referred to another thing altogether of a later date.

Q. Then, as I understand you, you cannot tell us in what month you first saw Stark?

A. I think it was in January.

Q. I do not want what you think, for we might sit here and think until doomsday; but I want to know what you know. You cannot tell us in what month you first saw Stark positively?

A. Not positively.

Q. Nor can you state positively in what month you first saw the drawing of the Stark bed?

A. No, sir.

Q. But you are positive that when you did see it Mr. Stevens showed it to you?

A. Yes, sir.

Q. And you are positive that whatever you know about the Stark patent and the drawings and the specifications you learned from Stevens?

A. Yes, sir.

Q. When you saw the drawings and the specifications was Mr. Newcomb present?

A. No, sir.

Q. Was any one else present?

A. No, sir.

Q. You are now in the employ of these defendants?

A. Yes, sir.

Q. And you are a stockholder of the concern?

A. No, sir.

Q. You were?

A. Yes, sir.

Q. When did you withdraw?

A. On the first of January.

(Mr. Otterson offers in evidence certified copy from the Department of the Interior of the petition of Andrew Stark for the reissue of the Stark patent, marked by the examiner "No. 70, January 30, 1880, S. G. W.")

Adjourned until Wednesday next, February 4th, 1880, at 3 o'clock p. m.

343 PHILADELPHIA, WEDNESDAY, *February* 4, 1880.

Parties met at the office of the master.

Present: The master, Mr. Mitchell, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

R. MASON sworn and examined by Mr. OTTERSON.

Q. Do you reside in Washington?

A. Yes, sir.

Q. What is your business?

A. I am a lawyer by profession; practicing in patent cases only, however, in the courts and before the Patent Office.

Q. Do you know the Hale & Kilburn Manufacturing Company?

A. Yes, sir; I am acquainted with the members of that company—several of them, at least.

Q. Have you had any professional relations with them?

A. Yes, sir; I have had several employments from them.

Q. With reference to the Everitt folding bed?

A. Yes, sir; that is, I think, the first employment I had at their hands.

Q. Did you ever have occasion to examine the Everitt patent and the state of the art with reference to folding beds?

A. Yes, sir; I did.

Q. I mean, of course, for these defendants; for the Hale & Kilburn Manufacturing Company?

A. Yes, sir; I was employed for that purpose by them and made an examination of the state of the art at the time.

Q. Do you remember when that was?

A. I do not think I can fix the time; it was several years ago; it was very shortly before the date of the Stark reissue.

Q. In examining the state of the art did you come across the Stark patent?

A. Yes, sir; my impression is that I was employed in the first instance to look at the Stark patent, it having been represented to me that a claim had been made upon the part of Mr. Stark that they were infringing his patent, and I was employed and instructed to examine the Stark patent and to see what it was; and, in connection with that, also the Everitt patent and other rights under it.

Q. Will you just go on in your own way and tell what you did in that connection?

A. I found in the examination of that Stark case that while the patent of Everitt as it then stood was in such shape that, according to my present recollection of it, they did not infringe the claim as it stood, it was easily susceptible of being reissued in such shape as entirely to cover the bed which they were manufacturing under the name of the Everitt bedstead.

Q. Then what did you do in pursuance of that?

A. I advised them, according to that conclusion, that they could not carry on that business with the Stark patent outstanding in the hands of an adversary party; that they were liable to be enjoined and stopped entirely in the manufacture and held responsible for the entire amount of the profits that they might make in the manufacture and sale of the bedsteads.

(Objected to by Mr. Mitchell.)

Q. What was done after that?

A. I told them that they must secure themselves against the Stark patent in some way, and advised them to buy it (objected to by Mr. Mitchell), which was done, as I understood from the parties; they sent me, I think, a contract which they had made with Mr. Stark, on which, according to their direction, I prepared the papers for the reissue of the Stark patent, and, I think, at the same time that those papers were issued prepared a formal assignment of the Stark patent to the Hale & Kilburn Manufacturing Company, which was deposited in my hands as an escrow to be delivered to Hale & Kilburn upon the determination of an action to be commenced in the
344 name of Mr. Stark, as the owner of the patent, against them as infringers, and I held it for some time and finally, I believe, delivered it to them on their calling for it.

Q. What became of that original paper or contract that you speak of?

A. My recollection about that is not distinct. My impression is that it was destroyed at the time, as a paper that had fulfilled its mission when Stark executed the formal assignment.

Q. What was that original paper which was thus destroyed?

A. I cannot state with precision; my impression is that it was a contract for the purchase of the patent; my recollection of it is that it was an informal paper—such a paper as business men prepare. I do not think it was a formal assignment of the patent, but, as I said, my recollection about it is not as distinct as it is in regard to some other things connected with the transaction. I remember distinctly the examination and the advice which I gave them, and the things which were done pursuant to that advice.

Q. Do you remember having any intercourse with Mr. A. B. Stevens on that subject?

A. Mr. Stevens was a client of mine and was a numbee of times in my office with reference to matters of his invention. He was also, I remember, in the employment at one time of the Hale & Kilburn Company, and we have had some conversations with regard to their affairs, but I am not able to recall any of them.

Q. Do you remember any conversations or business transactions with him, or with the Hale & Kilburn Company, in which he was interested or interested himself relating to this bed?

A. My recollection is that Stevens got up some sort of a contrivance that related to convertible beds, but I think nothing ever came of it. I think there was nothing in it. At any rate, I am quite confident I never made any application for a patent on it.

Q. Did you commence, in Mr. Stark's name, suit against the company?

A. Yes, sir.

Q. Where?

A. In Philadelphia—the circuit court of the United States for the eastern district of Pennsylvania.

Q. What was the purpose of that?

A. When I found the title to this invention, or all that there was of any practical value, in my judgment, in Stark, I advised these parties, the Hale & Kilburn Company, that they must either secure

themselves under that patent or discontinue the manufacture of the bedstead; that if they did not it would result in loss to everybody connected with it and stop their manufacture of the bed entirely. I had submitted to me the contract between Everitt and the Hale & Kilburn Company, in which I found that they had agreed to pay a large license fee for a patent that, if valid at all, was only so upon the narrowest constructions and for the most minute details for which a patent could be granted, even under the liberal practice of the Patent Office (objected to by Mr. Mitchell), and the price seemed to be utterly disproportioned to the protection that they were obtaining under the patent. At the same time, I advised them that it was not desirable to make any breach with Mr. Everitt. Their bedstead was known under his name, and I told them that it was a very common thing for men to carry on manufacturing under a patent that was of very little or no account without the trade making the discovery, and that it was not desirable to advertise the defects in it; the only alternative was to secure the Stark patent or to quit, I understanding that Mr. Stark then was pressing his claim and demand against them as the infringers of his patent. In order that the matter might be brought before Mr. Everitt, and that he might have an opportunity to make a defense to whatever case might exist on the Stark patent, if one did, and in order to make provision in case of an adverse decision on a
345 patent suit brought against them as the manufacturers, that they might have the privilege of throwing up that patent, I advised them not to complete the purchase, so as to have an actual transmission of the title from Stark to them; but that Stark retaining the title, he should file a bill, or they should notify Mr. Everitt, rather, and call upon him to make a defense, if he had one to make, and that they should employ counsel, without informing their counsel of the fact that there was anything behind the case more than appeared on the surface of it, and instruct him to make a defense, if Mr. Everitt was able to furnish one. I understood all the time that they were entirely willing to pay Mr. Everitt a liberal compensation for the use of his patent, but that they were not willing, in view of the fact that there seemed to be no bottom, no title, to the patent, or to the bedstead rather, to pay the full price stipulated under the conditions of that contract; and, as I said before, the alternative seemed to be either to buy in the Stark patent or quit. If they quit they would lose all their profits in manufacturing the bed, and Mr. Everitt would lose his royalty, and I thought it was fair and just if they could obtain a remodelling of that contract that they should do so, affording Mr. Everitt the opportunity to make a defense to the Stark patent, if he had any defense to make. That was about the advice, and in pursuance of that I filed the bill. This litigation sprang up shortly afterward, and I believe nothing was ever done with it. Whether it has been dismissed now or not I cannot advise.

Q. Who prepared the petition for the reissue of the Stark patent?

A. It was prepared in my office. It is in the handwriting of my then partner, D. P. Holloway. The specifications I wrote. I think the original specification that is on file in the Patent Office is in the

handwriting of my son, who was then acting as our clerk, but it was copied from a specification written by me.

Q. Have you examined that original petition recently?

A. I have, recently; about ten days or two weeks ago.

Q. Is there any alteration on the face of that petition in your handwriting changing the running of the reissue from the Hale & Kilburn Manufacturing Company to Andrew Stark, the petitioner?

A. No, sir; it could not have been, for the arrangement did not contemplate any such thing.

Q. That petition was forwarded here for execution, was it not?

A. That is my impression; the witnesses to the case are persons I did not know; that is the usual practice.

Q. Was there any alteration of that paper after it returned to your office changing the parties?

A. There was a little interlineation of a line relating to some of the formal parts of the petition.

Q. My question was changing the parties to it?

A. Oh no, sir; no, sir.

Q. Do you remember what the interlineation was, or would the exemplification assist you at all?

A. Yes, sir; it would.

Q. (Exhibit No. 70 shown witness.) Look at it and see.

A. I found on an examination of the title to the Stark patent, for which we are obliged, in filing an application for a reissue, under the rules of the Patent Office, to present a certified abstract of title from that division of the office which has charge of the titles, that Stark had sold, I think, five counties, part of them in Missouri and part of them in Kansas. In writing the body of the petition it had been stated that he was the sole owner, and when I found that these five counties had been sold, I interlined the words, as shown in this exemplified copy, "except as to five counties in Kansas and Missouri." That is the only change that was made in the case, except, I think, a similar change made in the oath. (Objected to by Mr. Mitchell.) I examined the original record for the purpose of
346 seeing what it did contain, at the request of Judge Otterson, a fortnight or such a matter ago. That interlineation is in my handwriting. The remainder of the paper is in the handwriting of Mr. Holloway.

Q. Mr. Stevens says that in that original paper on file "you will find enough of it torn off and written in Mr. Mason's handwriting to change the parties to whom it runs to—to change it to Mr. Stark;" is that true or is it not true?

(Objected to by Mr. Mitchell.)

A. It is not true; there is no such mutilation in the record, and it is next to impossible that there could be such a change made in paper in the shape that that was by tearing out, for if you tore off the lower end of it you would tear off the signature of the parties to the petition; it is only a short page.

Q. And the only alteration is what you have mentioned?

A. That is the only alteration that appears on the face of the paper, and that was made by me; whether it was made before the execution of the paper or not I am not certain.

Q. Mr. Stevens testified with reference to that original paper of which you have spoken and which you call a contract for the purchase of the Stark patent by the Hale & Kilburn Company that he delivered it to you in person, it having been handed him by Henry S. Hale, in this city, for that purpose; and that having handed it to you he returned here, and upon consultation with the parties here you were telegraphed to not to put the paper on record, because it was an assignment from Stark to their company. Do you remember anything about that, and is that true?

(Objected to by Mr. Mitchell.)

A. I have no recollection that Mr. Stevens brought me that paper. I have examined my office files and find no evidence of such a document; I have no recollection about it.

Q. Was the paper itself such a one as was in shape for putting on record?

A. As I stated, my recollection of it is exceedingly indistinct; it is rather an impression than a recollection of a paper. I cannot recall the form or shape of the paper. I know it has always been in my mind, since my attention was called to it, that it was a contract for an assignment, and not a formal assignment. If a formal assignment was made I know of no reason why I should have prepared another.

Q. That paper did not go on record, but the formal one that you prepared is the one that did go on record?

A. Yes, sir, if it was recorded; I am not certain whether it was or not.

Cross-examined by Mr. Mitchell:

Q. Were you told by the Hale & Kilburn Manufacturing Company, or any of them, that they had bought this patent from Mr. Stark in February and had given him a due bill of $1,000 for it?

A. I learned that they had bought it; I do not remember how. Mr. Kilburn was in my office, and so was Mr. Stark. I know it is in my mind as a thing that I knew that they had bought it.

Q. Long before you prepared the second assignment?

A. Well, my recollection would be that it was not long before, for my impression is that the whole thing occupied but a few weeks.

Q. Give me some idea, then, as nearly as you can, how long before you prepared the second assignment it was that you learned that the Hale & Kilburn Manufacturing Company had made an absolute purchase of this patent for $1,000.

A. I knew of their having bought the patent, or the right of Stark in the patent, for I advised them to do it, and they reported that they had done it. It would be the veriest guess work in the
347 world for me to say how long it would be before the application for a reissue of the patent being filed; but my impression is that it was only a few weeks.

Q. Do you remember when it was when you first saw the agreement to assign the patent that you speak of?

A. I can only give you as to that my impression that the whole thing occupied two or three or four weeks, at the outside.

Q. Can you state the month when you saw it?

A. No, sir; I cannot state the year. It was one of those things that occur in the ordinary course of a pretty large practice that make no impression on my memory.

Q. Were you informed by them that, so far as Mr. Stark or his rights were concerned, they had become absolute owners of the patent by means of this first contract or sale?

A. I do not think any information was communicated to me on that subject, further than that they had bought this patent.

Q. And had given him $1,000 for it?

A. I believe that was a part of the statement.

Q. What interest did Mr. Stark retain in his patent on account of the agreement that you made?

A. None; the assignment that was made by me was an absolute assignment of the interest which he had in his patent, and he retained it; he retained the title until it passed by the formal delivery of the paper to the purchaser, by myself holding it in escrow.

Q. What purpose did you have in holding the paper in escrow?

A. In order that the title might remain in Mr. Stark, and that he might be able to say he was the owner; that he held the title, and could therefore maintain a suit.

Q. Did Mr. Stark have any interest in the patent during that time?

A. Not in equity; he had the legal title.

Q. But it was a bare legal title and nothing more?

A. Entirely so.

Q. Why was not the Hale & Kilburn Manufacturing Company entitled to the possession and delivery of this second assignment at any time they chose to ask for it?

A. I know of no reason why I should not have delivered it to them if they had called on me to deliver it. I think I did deliver it when they called on me.

Q. Did you understand that your holding a paper in such a way was an escrow?

A. I suppose that the title to that patent in law did not pass until the assignment had been delivered; but it was expressly understood by the parties putting the paper in my hands that it should not operate as a delivery to the Hale & Kilburn Manufacturing Company; therefore I supposed that Mr. Stark remained the holder of the legal title until the delivery of the papers to the Hale & Kilburn Company.

Q. I did not ask you your opinion as an expert; but you yourself have invited the question, and therefore I now ask you the question as an expert.

A. I will take great pleasure in answering it.

Q. Did you understand that your holding a paper in such a way was an escrow?

A. It is a great many years since I read a definition of an escrow, and I may be mistaken about it. I have told you what I understood was the effect of this transaction. I may be wrong; but I understood the effect of that transaction was not to pass a legal title from Mr. Stark, but that it remained in him, and that the paper was in my hands, as his agent, to be delivered over to the other parties, according to the terms of the understanding.

Q. By whom were you employed; by Stark or the Hale & Kilburn Manufacturing Company?

A. By the Hale & Kilburn Manufacturing Company.

Q. You were not employed or paid by Stark at all?

A. Not that I know of. My fees were paid by the Hale & Kilburn Company.

348 Q. Did you make any charge to Stark for services?

A. No, sir.

Q. Then, at the time you held this assignment, so called, in escrow, or in escrow so called, you were the attorney for the assignees, and for them only?

A. No, sir; I was the attorney for both parties for that purpose, so constituted expressly by Mr. Stark, and my fees were paid by the other party.

Q. Was it by your advice that all this was concealed from Mr. Everitt by the defendants here?

A. I do not remember whether I gave any advice about it or not.

Q. Did the defendants, or either of them, communicate to you their purpose of concealing this from Mr. Everitt, in order, by the concealment of that information, to induce him to relinquish a part of his royalty?

A. No such motive was ever expressed to me. It was to be concealed from Mr. Everitt in order that Mr. Everitt might be induced to make a defence to that Stark patent, if he had one to make.

Q. Do you remember when, on one occasion in Philadelphia, the defendants, or some of them, in your presence, denied that they were the owners of the Stark patent?

A. I remember a conversation which occurred, I think, in your office that was to that effect in terms. I understood then, however, so far as I understood their answer to go, to refer to the legal title to that patent.

Q. How long was that after these assignments had been made and brought to you in Washington?

A. Several months, I should think; I cannot remember the time, for I do not remember what time either of them occurred.

Q. How long was it before the filing of the bill by you in the circuit court of the United States in Philadelphia?

A. I cannot say that, because I do not remember when the conversation occurred. I do not remember whether it was before or after the bill was filed. I do not recall enough of the circumstances to enable me to say.

Q. I understood you to say a moment ago, in your examination-in-chief, that, in your opinion, a reissue of the Stark patent would cover all that was valuable in the Everitt patent?

A. Everything. It is nothing but a slight modification of the Stark bedstead.

Q. Why, then, did you not advise the Hale & Kilburn Manufacturing Company, if they wanted to get rid of the large royalty they were paying to Mr. Everitt, to give him back his patent as called for by the agreement, and continue manufacturing under the Stark patent, which they had bought?

A. I think I did advise them to do so.

Q. Have you any distinct memory on that subject?

A. A pretty strong impression.

Q. That you did advise them to give Mr. Everitt back his patent? When was that advice given?

A. Always from the time the matter came into my hands down to the last time I spoke of it. There has been no allusion to it for a good while. I know I so advised them after this bill was filed.

Q. You mean the bill under which we are now taking testimony?

A. Yes, sir.

Q. Then it was too late?

A. I did not, however, feel it to be their interest, and did not so advise them, nor did I understand that they so desired, as an original proposition, to break with Everitt entirely. They were willing to continue and to pay Everitt a royalty, and what I regarded as a liberal one; but whenever the matter of the surrender was brought to my mind I advised them. And that is an answer to your question. To give him back his patent; for there was not the slightest need
349 for their infringing it, or anybody else, to make a bed as good as their own, or something like it. His patent covers nothing but an open hinge and a couple of side brackets, if it covers that, and I doubt if it is as valid for any purpose; and I so advised him.

Q. Do you remember whether or not the purpose of Mr. Stevens' going to Washington to consult you was not to see whether he could not, with some invention he might make joined to Stark's bed, make a patent, that would entirely free them from Mr. Everitt's patent, and that Mr. Stevens' inventions, in connection with the Stark patent, were submitted to you for your advice?

A. My recollection about that matter is exceedingly indefinite. I recollect that Mr. Stevens made an improvement in a bedstead, and I made some examination of it; and the conclusion of it was that no application was made for a patent. That is all that I recollect about it. I have tried to recollect something about it, and I am entirely unable to do it. There is nothing to fix it in my mind, and it is gone.

Q. Can you recollect whether or not there was a purpose on your part to have the Stark patent first run to the Hale & Kilburn Company, who had bought it, and then, afterward, that purpose was changed, and the reissue was made to Stark again?

A. I have no recollection of anything of that sort.

Q. Cannot you remember that such an issue was prepared—that the papers were prepared for a reissue to Stark himself, and then the change was made?

A. No, sir; no such thing appears on the face of the reissue.

Q. I know that no such thing appears on the face of the papers, but my question was confined to a change which was previously made in the papers. Were not such papers prepared in your office?

A. I find no such papers in my office. I have examined my papers, and I am in the habit of preserving my papers, and there is nothing to indicate that anything of the sort was ever done. I do not think that there was ever anything of the sort done. I think I prepared the one specification, and asked my partner to write the petition and oath, which are simply copied out of a form book, and that was all that ever was done in that connection. I have no recollection of anything beyond it.

Q. Who was your partner?

A. D. P. Holloway.

Q. Where is he now?

A. He is in Washington.

Q. Do you remember why the second assignment prepared by you and executed by Stark for this patent was not put upon record?

A. I have explained the reason. It was not to go on record. If it went on record it would operate as a transfer of the title. It was deposited in my hands in order that it might not operate as a transfer of the title.

Q. Was not the purpose of the defendants, at the time the papers were put in your hands, so that they could not operate as a transfer of the title, in order that the knowledge of it could be concealed from Mr. Everitt?

A. My understanding of it was that Mr. Everitt was not to be informed of the transfer?

Q. Is Mr. Holloway your partner now?

A. No, sir; we have dissolved.

Q. What is your first name; what does R. stand for?

A. Rodney.

Q. Mr. Holloway, your late partner, was formerly Commissioner of Patents, was he not?

A. Yes, sir.

Q. Do you remember on a certain day, early in 1878, that you met Mr. Stephens at the Pennsylvania railroad depot in West Philadelphia?

A. No, sir; I have no recollection of it.

Q. And got into a horse-car with him, and went down to
350 the store of the Hale & Kilburn Company, on Sixth street.

A. I remember coming here and going to the Hale & Kilburn Company's store, and it is quite likely that Stevens met me to show me the way; I really do not remember.

Q. When you got there did not you look at models that Stevens had prepared of folding beds, with a view of seeing whether something could be got up to escape the Everitt patent?

A. I do not remember looking at such models. I certainly never looked at them with any such view. My recollection about the matter is that Mr. Stevens had made some improvement that he thought would add to the value of the bedstead, and the matters were sub-

mitted to me for examination. I had told them how they could avoid any pretence of their infringing the folding bed.

Q. You mean the Everitt bed?

A. I mean the Everitt bed.

Q. And you say you had told them?

A. Yes, sir.

Q. You had told them before this?

A. Yes, sir; I had told them how it could be covered and how they could avoid it.

Q. When was your first acquaintance with Mr. Stark?

A. He came to my office, I think, with Mr. Kilburn about the time the application was filed for a reissue; I think a little before; my impression would be about that it was prepared shortly after he was there, and sent to Philadelphia to be executed; but I m not certain about that.

Q. Were you present when the first contract between Mr. Stark and the defendants here was thrown into the stove and burned in your office?

A. If it was thrown into the stove and burned in my office I did it, I suppose; nobody else in my office had anything to do with this matter but myself, that I know of.

Q. Have you any recollection of Mr. Stevens going to Washington and to your office just after the time when you saw Stark and Kilburn together with a model for your examination, to see whether if, in connection with the Stark patent, it would do to make the folding bed by?

A. I have no recollection of Mr. Stevens' operations at all, any further [than] that I think I recollect that he had some devices for the improvement of this bedstead, but what they were I am utterly unable to recall. Those matters pass continually under my observation, and make very little impression on my mind; I do not attempt to recollect them.

Re-examined by Mr. OTTERSON:

Q. I omitted to ask you how long you had been in practice.

A. I have been practising in patent cases, to some extent, twenty-five or thirty years. I have for fifteen years past made it my business, exclusive of everything else. The character of the business is one that makes it necessary for me to examine patents and compare them with other inventions, older or newer, and other machines, for the purpose of determining questions of infringement, or anticipation—they being pretty much the same thing.

Q. Where have you been practising?

A. My office has been, since 1865, in Washington. I have practised in a good many of the different circuits, as business employments have called me. My office is in Washington.

Q. And you have made a special examination of this subject of folding beds?

A. Yes, sir; I made what was intended to be, and what I supposed was, a very thorough examination, an exhaustive one, of the state of

the art as it existed at the time. It was necessary to do so in order to determine whether Stark could reissue his patent so as to
351 cover the Everitt bed. Without that I could not have given an opinion on the subject.

Adjourned until Monday next, February 9, 1880, at 3 p. m.

PHILADELPHIA, MONDAY, *February* 9, 1880.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, Mr. J. Warren Hale, Mr. Cheney Kilburn.

OWEN D. ROBERTS recalled and examined by Mr. OTTERSON:

Q. Will you look at your books and state, if you please, when your firm or corporation made their first sale to the Toby Manufacturing Company.

A. I will. The first regular sales to the Toby Furniture Company were made about the 12th to the 15th of October, 1877. We had previously sent them a lot of beds on sale, or consignment as we call it, but the first regular sale was about October 16th. The first regular charge, I think, was October 16th, 1877, as I find in sales book A, p. 573.

Q. What was the rate of discount in that case?

A. Thirty-three and a third per cent.

Q. Now, state the next sale to them.

A. The next sale to them was on the 17th of October, the same book, page 574.

Q. What was the rate of discount?

A. Thirty-three and a third per cent.

Q. What was the next?

A. The next was on October 29th, 1877, sales book A, page 590, same rate of discount.

Q. Go on and give the other sales in order.

A. Clear through?

Q. Yes, sir.

A. There are a great many of them.

Q. There are a great many other sales, then, from that time to this?

A. Yes, sir. A great many from that time to this and at that same rate of discount, up to a certain date at which the discount changed.

Q. Up to what date?

A. Up to September 14th, 1878, at which time the discount changed to forty-three per cent.

Cross-examined by Mr. BOWMAN:

Q. When did you say the discount changed to forty-three per cent?

A. September 14th, 1878.

Q. Will you be kind enough to state how many sales were made after that date on which such a rate of discount was allowed?

A. I cannot answer that at once without going through this whole book. Every bedstead that was charged from that time up to February 11, 1879, was charged at that rate of discount.

Q. Can you show me more than two entries in which that rate of discount was allowed by the defendants?

A. Yes, sir. I suppose I can show you thirty-three by going right through the book, page after page.

Q. Can you show me one?

A. Yes, sir; here is one charged September 14, 1878, sales book A, page 595, on which the discount is forty-three per cent.

Q. What was the reason for changing the discount so materially to this firm?

A. The reason I have already given in my previous testimony; on account of the great distance from Philadelphia and the high rate of freight, and to enable this firm to sell our goods that we did here in Philadelphia to the trade.

Q. Were they special agents of the defendants for the sale of these goods?

352 A. They were; yes, sir.

Q. Can you name another firm, or any one else, to whom you allowed such a rate?

A. No, sir.

Q. I think you stated that this firm was in Chicago?

A. Yes, sir.

CHENEY KILBURN recalled and examined by Mr. OTTERSON:

Q. Mr. Stevens has stated, in his recent examination, that you told him not to let Mr. Everitt know of your dealings with Mr. Stark. Is that true or not?

A. That is not true.

Q. He testified that you told him to write to the postmaster at Topeka, Kansas, to inquire if Mr. Stark was there. Is that true?

A. It is not. No, sir. I never requested him to do it.

Q. Did you know anything about his writing to Topeka, Kansas, either before or after it was done, if it was done?

A. I never knew anything about it, whatever.

Q. Did you propose to send Mr. Stevens to Kansas to buy the Stark patent?

A. No, sir.

Q. Is Mr. Stevens a likely kind of person to execute such a trust?

A. He is the last person I should think of sending. If I should want to send a person, he is the last person I should think of.

Q. Who took to Washington the paper that was drawn and executed in your office between Mr. Stark and your company with reference to the transfer of your patent?

A. I took it myself.

Q. And to whom did you hand it when you got there?

A. To Colonel Mason.

Q. Mr. Stevens says that you handed it to him here, in Philadelphia, to take to Washington, and that he took it to Washington. Is that true or is it not?

A. That is not true; I took it myself.

Q. Was it ever proposed, in any of your transactions, that Mr. Stevens should take the assignment of the Stark patent and bring a suit against you in his name, to test the validity of the Everitt patent?

A. I never heard of it.

Q. Did you know anything about any one telegraphing to Washington from your place to Mr. Mason, directing him not to record that paper?

A. No, sir.

Q. If such a thing had been done, would you likely have been privy to it?

A. Very likely; it would not have been very likely that it should be sent off without my attention being drawn to it.

Q. Was there ever an exigency in the progress of the business which would seem to require such a transaction as that?

A. I do not understand you.

Q. Was there ever an exigency in the business which would seem to require a notice to Mr. Mason to withhold the record of the paper?

A. Not to my knowledge. I never heard of such a thing.

Q. It is said that one of the peculiarities of this folding bed that you have been manufacturing was a movable bottom board. Did you ever manufacture bedsteads with a movable bottom board?

A. No, sir.

Q. You never used that feature of the patent at all?

A. Never used it at all.

By Mr. BOWMAN:

Q. Where did you request Mr. Stevens to write to Mr. Stark?

353 A. I do not know as I understand your question.

Q. Where did you request Mr. Stevens to write to Mr. Stark?

A. I never requested him.

Q. Do I understand you to say you that never requested him to communicate with Mr. Stark in any way?

A. I never did, in any way, shape, or manner.

Mr. OTTERSON (to Mr. Bowman): You misunderstand. The question is not that Mr. Stevens wrote to Mr. Stark. Mr. Stevens says he was requested to write to the postmaster at Topeka, Kansas, which Mr. Kilburn denies.

By Mr. BOWMAN:

Q. You say you did not request Mr. Stevens to write to the postmaster?

A. No, sir; I never did.

Q. You do not mean to say that Mr. Stevens did not write to the postmaster, do you?

A. I do not know what Mr. Stevens did; but I never requested him.

Q. You had conversation with him, had you not, about his writing to the postmaster?

A. I have no recollection of ever having any conversation with Mr. Stevens about writing to the postmaster at Topeka, Kansas—not the slightest.

Q. Not the slightest recollection?

A. No, sir; not the slightest.

Q. I suppose it is very possible that you might have forgotten it?

A. Well, I have no recollection of any such thing; in fact, I know I never asked him. He would be the last man I should ever have asked.

Q. I have got away from that. I am not talking about your asking him to write; I am asking you if you did not have conversations with him about the result of his writing to the postmaster?

A. I do not recollect it.

Q. Do you remember his showing you letters received from the postmaster?

A. No, sir; he might have done so.

Q. He might have done so; but you have no remembrance about it?

A. I have no remembrance of any such document.

Q. Do you say that you never cautioned him not to say anything to Mr. Everitt about his (Stark's) business?

A. No, sir.

Q. Then why were you so careful to conceal it from Mr. Everitt?

A. I do not know that we were cautious about it. We tried to have Mr. Everitt buy with us.

Q. You did conceal it from him, did you not?

A. No.

Q. Did you tell Mr. Everitt you were negotiating with Mr. Mason in this Stark business?

A. Well, Mr. Stark came on here——

Q. No; please answer my question, and we will get on much better. Did you tell Mr. Everitt you were negotiating with Mason & Stark in this matter of the Stark patent?

A. I do not know as we did.

Mr. DANIEL CONNELLY recalled and examined by Mr. OTTERSON:

Q. Do you remember that the application of Mr. Everitt for the patent upon his improved bedstead was rejected?

A. I do.

Q. Do you remember that it was rejected because of the existence of the Stark patent, or the Maine patents, or one of them?

A. According to the best of my recollection, the Maine patent was cited as a reference. I have no recollection whatever of the Stark patent having been cited, though it may have been.

354 Q. Would the exemplification refresh your recollection?

A. I cannot say that it would. I am in the habit of receiving these letters of rejection I might say daily; on some days several of them. It would be simply impossible for me to burden my mind with a recollection of all the references that have been

cited in the many hundred applications that I have assisted in preparing and filing since the Everitt patent was applied for.

Q. Then you simply do not remember whether the Stark patent was cited as an obstacle or not?

A. That is so.

Q. Did you report to Mr. Everitt the fact of the rejection?

A. I decline to answer as to any communication that passed between Mr. Everitt and myself in regard to the matter, as it was entirely professional, therefore, confidential, and I am not at liberty to disclose it.

Q. Then you decline to answer the question?

A. I do.

Q. Did you not report to Mr. Everitt the fact that his application had been rejected because of the existence of the Stark and the Maine patent?

A. I decline to answer that question for the same reasons given to the previous one.

Cross-examined by Mr. BOWMAN:

Q. It is not an unusual thing to have an application for a patent rejected on first application, is it?

(Objected to by Mr. Otterson.)

A. On the contrary, it is almost invariably the rule.

Q. Do not you know that you did not?

A. I do not know as we did not; I have no recollection of anything about that.

Q. Did you tell Mr. Everitt that you had the assignment of Stark's patent, and that Mason had prepared the papers?

A. I do not recollect whether I did or not.

Q. Are you not able to say, after all this investigation, positively, that you did not, and have you not so sworn during the course of this investigation?

A. I do not know as I understand the question exactly.

Q. My question is, are you not able to say, positively, that you did not tell Mr. Everitt anything about your arrangements with Stark and Mason, and your getting Mason to prepare an assignment of the Stark patent to you; and have you not so sworn in this investigation that you did not tell Everitt anything about it?

A. I think I did. I think we did not tell Everitt anything about it.

Q. You think you did not?

A. Yes, sir; I think we did not tell him anything about it—that is, after we tried to get him to buy it.

Q. Then you did conceal it from him?

A. Not in the fore part; we wanted him to buy with us.

Q. But in the fore part you had not communicated with Mason?

A. I do not recollect how that was, but I know in the fore part he had the privilege of buying with us. He said he would not buy; it was not good for anything.

Q. If it was not good for anything, then why did you keep all this business from Mr. Everitt?

A. I do not know that we should tell anything more than anybody else. We had given him up entirely. He would not buy with us, and we had given him up entirely.

Q. I know that you had given him up, but that is not an answer to me at all. You did keep it from Mr. Everitt, did you not?

A. I do not know that we did; I have no recollection about that.

Q. Did you tell him?

A. I have no recollection about that.

355 Q. If you had told him, would not you recollect it?

A. Very likely.

Q. And you do not recollect it?

A. I do not recollect it.

Q. You will not swear that you did tell him?

A. After [the] suit was commenced I will not swear that I said anything to him about it.

Q. If you were so careful about having all this to yourselves, and were so careful about communicating any of these facts to Mr. Everitt, is it not very probable that you cautioned Mr. Stevens not to tell Mr. Everitt during these transactions?

A. Mr. Stevens had nothing to do with the transaction.

Q. Please answer my question. My question was, if you were so careful about having all this to yourselves, and were so careful about not communicating any of these facts to Mr. Everitt, is it not very probable that you cautioned Mr. Stevens not to tell Everitt during this transaction?

A. I have no recollection about that.

Mr. OTTERSON: I object to the witness being asked to state about probabilities. He has a right to answer about facts.

By Mr. BOWMAN:

Q. What is your answer?

A. It is not probable that I should say anything more to Stevens than to any other of our employés.

Q. You were present at Mr. Mitchell's office, were you not, during the interview referred to in your examination by Mr. Mitchell?

A. Oh, yes, sir.

Q. Did you tell Mr. Everitt, or Mr. Mitchell, as counsel, on that occasion, that you owned the Stark patent?

A. I do not recollect what was said at that time. There was very little said there in Mr. Mitchell's office, at that time.

Q. You say that you gave Mr. Mason no instructions to keep the Stark patent from the record?

A. No, sir.

Q. You did not give them?

A. Not to my knowledge. I did not know there were such instructions given.

Q. Did not Mr. Mason, as your attorney, advise you not to have them on record, lest Everitt might find them out?

A. I do not recollect anything of the kind.

Q. Well, you know they were not put on record, do you not?

A. Yes, sir.

Q. And do not you know that that was by the advice of your counsel, Mason?

A. Yes, sir.

Q. And did not he tell you why he would not put them on record?

A. I do not recollect. He had the whole thing in his hands, to manage just as he pleased. He was the man who managed the matter, and it was all in his hands.

Q. Then you do recollect his telling you not to put them on record?

A. Never.

Q. But you do not recollect the reason for it?

A. No, sir; I recollect nothing about it.

Q. Why were they not put on record?

A. Oh, I don't know. I am not a lawyer.

Q. Did Mr. Mason ever tell you why they were not?

A. No, sir; not to my recollection.

Q. Why did you take Mr. Stevens to Washington with you when you went to see Mason about this, with Stark?

A. I did not take him.

Q. You all went there together, did you not?

A. I have no recollection of Stevens going down with Stark and myself. He might have been there; but I have recollection of it.

356 Q. Then you do not mean to say he was not there?

A. I have no recollection of his being there.

Q. Your recollection may be very imperfect about it, then, may it not?

A. Well, I am pretty sure of it. I know I never employed him to go there.

Q. He went on his own responsibility, did he not, with the understanding he had with your firm?

A. If he went down he went on his own responsibility.

Q. Were not you to give him an interest in it if he succeeded?

A. No, sir.

Q. No interest at all—he was doing this for the love of it?

A. He was going to get up a bed, away from everybody else, you know; that was what he was trying to do. He was not going to interfere with Mr. Maine or Mr. Stark or Mr. Everitt. He agreed to get up a bed, and if he got up one to let us have it for a dollar royalty. That is all I know about his bed business.

Q. Were not you also trying to get up a bed by which you could escape the royalty to Mr. Everitt; was not this the object of your going into this arrangement with Stark?

A. We were obliged to buy Stark out, or stop our business; or, at least, we were advised by our counsel to that effect.

Q. I suppose if Mr. Stevens could have made any arrangement

with Mr. Stark by which to purchase his interest in his patent on better terms than you did yourselves you would have had no objection in taking the patent from Stevens, would you?

A. We never employed Mr. Stevens——

Q. Will you answer my question?

A. If he had a bed?

Q. Yes, sir.

A. He did not know anything about Stark's patent. We knew of it before Mr. Stevens did. Stark came there, and some of our folks told Stevens about it.

Q. That does not answer my question, although I am very glad you stated that. My question is: If Stevens had made terms with Stark satisfactory to you, you would have accepted those terms, would you not?

A. I do not know as I understand that.

Q. You do not understand that?

A. Please repeat it.

Q. If Stevens had made terms with Stark, and purchased the patent from him upon terms which were satisfactory to you, would you have adopted Stevens' work?

A. Well, perhaps we should. We might have bought the Stark patent from him. If he had found the Stark patent, and bought it, we would have been obliged to buy it from him or Stark.

Q. You made no objections to Mr. Stevens operating in your establishment for the purpose of getting up a bed, did you?

A. No, sir; not at all. He was working at his own responsibility.

Q. And you furnished the material and the room?

A. Yes, sir.

Q. And you made no objection to anything he might have done to accomplish the purpose which you were after, which was to get up a bed which would defeat Everitt's?

A. Not particularly Everitt's any more than it was everybody else's bed. That is what he was to do. He was to make a clean sweep.

Q. What interest had you in anybody else's bed?

A. He was to go ahead of everybody else.

Q. What you wanted to do was to get a bed which could be made cheaper than Mr. Everitt's bed, and which would make Mr. Everitt surrender a portion of his royalty, or all of it?

A. If he could get up a bed which could be made cheaper we would have put it in the market.

Q. Will you not answer my question; was not that your object?

357 A. Of course we wanted to get up a bed as cheaply as we could.

Q. And you finally made your own terms, through Stark, with Mason and Mr. Stevens together?

A. Mr. Stevens had nothing to do with it.

Q. After you did that you had no use for Stevens?

A. We made our terms with Mr. Stark. We had no use for Stevens for several months before Stark came.

Q. You found that you could do better with Stark yourselves, is not that it?

A. I do not know how well Mr. Stevens could do with him.

Q. Well, in your judgment, you thought you could do better with him than he could?

A. I thought I was as capable of trading for the Stark patent as he was.

Q. And you did the trading with him yourself?

A. I did the most of it, I think.

Q. Did anybody else have anything to do with it?

A. Well, Mr. H. S. Hale was with us occasionally, and some other members of the firm.

Q. You do not mean to say there were no telegraphs sent to Washington on this business, do you?

A. I do not say that.

Re-examined by Mr. OTTERSON:

Q. My understanding is that Mr. Stevens' efforts to get up such a a bed as he proposed were a perfect failure?

A. A perfect failure; yes, sir.

Q. And that was the end of it?

A. It was not good for anything. He never got up anything that was worth a penny.

Recross-examined by Mr. BOWMAN:

Q. Did you not offer him several hundred dollars to get him to sign papers for what he did get up?

A. Nothing on the bed business. It was the chariot chair, and he said he would throw in what was on the bed.

Q. And you were willing to pay him for it, were you not?

A. No, sir; we were willing to pay him for the chair, and he threw in the bed. I did not consider it worth anything myself.

Q. Will you explain to me, then, why you paid such eminent counsel as Mr. Howson to prepare the papers for you, including his invention in the bed, if you did not consider it worth anything?

A. I hardly know. We did not know but what there might be something, you know; but we did not have any such idea when we bought it—at least it had not been talked over with the concern—that there was anything in it.

C. WARREN HALE recalled and examined by Mr. OTTERSON:

Q. Do you recollect Mr. Stark calling at your place of business in Sixth street?

A. Yes, sir.

Q. Did he leave any papers relating to his patent in your office on that occasion?

A. No, sir; not a thing.

Q. Did you tell Mr. Stevens that he had done so?

A. Never had any conversation with Mr. Stevens about Mr. Stark.

Cross-examined by Mr. BOWMAN:

Q. When did Mr. Stark call there?

358 A. He called in the early part of February, 1878.

Q. What time in February?

A. It was the early part; I cannot tell you the exact date.

Q. Can you tell me what week it was or the month?

A. Along in the first of February.

Q. Was it about the 9th of February?

A. It might have been before that; I cannot tell; I know it was along in the first part of Febuary.

Q. Who called with him?

A. Nobody.

Q. What time of the day was it?

A. In the morning.

Q. Was Mr. Stevens then working for you?

A. I cannot say. It seems to me he was.

Q. Was he in the shop on this morning?

A. I cannot say, now; I am not in the shop all the time.

Q. What did Mr. Stark leave with you?

A. Nothing.

Q. Did not he leave a copy of his patent?

A. No, sir.

Q. Did you see Mr. Stark after that?

A. I saw him now and then. He said then that he was going to Washington.

Q. Stark said so?

A. Yes, sir; Stark said in the morning he was going to Washington.

Q. You saw him frequently after that, did you not?

A. I might have seen him when he came back from Washington.

Q. Did you ever see a copy of his patent?

A. I cannot say.

Q. Do you know whether or not he left a copy of his patent at your office?

A. Not to my knowledge.

Q. He might have left it there and you have not seen it?

A. That I cannot say. I am usually in the private office there, where any such thing would be left.

Q. But it might have been left and called to Mr. Stevens' attention without your knowing it, and some other member of the firm might have known it.

A. Hardly so.

Q. Did you have all the dealings with Stark in this instance.

A. No, sir.

Q. Then could not he have been with other members of the firm and have left the papers with them?

A. He might have done so; that I cannot say.

Q. You had various interviews with Mr. Stark and Mr. Stevens about this business, had you not?

A. Never had any conversation with Mr. Stevens in regard to Mr. Stark.

Q. Never opened your mouth to him?

A. No, sir.

Q. You seem very emphatic about some things?

A. I am emphatic on that—strong.

Q. Had any other member of your firm any conversation with Mr. Stevens about the Stark patent?

A. That I cannot say.

Q. You cannot say?

A. No.

Q. Why cannot you speak as emphatically on that subject?

A. Why, he might have talked somewhere else. I cannot tell.

Q. But in your presence?

A. Not in my presence.

Q. Do you remember the occasion when Mr. Stark, Mr. Stevens, and Mr. Kilburn all went to Washington together about it?

A. No, sir; I do not.

Q. You do not?

A. No, sir; I do not. I recollect when Mr. Kilburn and
359 Mr. Stark went, but I do not recollect Mr. Stevens going. I did not see him go.

Q. You did not see him go?

A. No, sir.

Q. And you do not recollect anything about their all going together?

A. No, sir; I do not.

Q. Do you remember Mr. Stevens going to Washington and taking the papers down, and then Mr. Stark and Mr. Kilburn following after him?

A. No, sir.

Q. You do not remember that?

A. I do not remember any such thing; no, sir.

Q. Do you remember about in March, 1878, after that—I mean after the time when Stevens took the papers alone, and Stark and Kilburn followed after him—all three of them going down together to Washington?

A. No, sir.

Q. Do you remember that Mr. Stark stayed in Washington, and Mr. Kilburn and Mr. Stevens came home to Philadelphia together?

A. No, sir; I do not remember any such thing.

Q. Then you do not remember much of what did take place about that time?

A. How can I tell what took place in Washington when I was not there?

Q. I am not asking you about what took place in Washington. I am asking you about what took place in your own business office in Philadelphia; and I ask you whether you do not remember any of those business transactions?

A. I do not.

Q. You say you do not?

A. I do not.

Q. Do you remember anything about Stark and the Stark arrangement, and about his patent, and about his arrangements with Mason?

A. I think my testimony will tell you what I recollect.

Q. Stevens was then working in your establishment, was he not?

A. He might have been.

Q. He might have been?

A. Yes, sir.

Q. Do you not know whether he was or not?

A. I could not without referring.

Q. You could not tell without referring?

A. I could not tell you; no, sir; because I know he was off and on.

Q. If you cannot tell without referring whether he was working there or not, how is it you can speak so emphatically in denial as to his having a conversation with you on this subject?

A. I know Stevens was around there; but I cannot say whether he was working or not. He might have been working on his own account. That I cannot tell.

Q. Do you remember telling Mr. Everitt, when Stark first came here, that he had been here and gone to Washington, and, thereupon, Mr. Everitt told you that he would like to know when he returned, as he would be pleased to see him?

A. I do not recollect Mr. Everitt telling me any such thing. I recollect telling him that Mr. Stark had been there, and that Stark said that we were infringing on him, and that Mr. Everitt said "Pooh! let him snap his whip, or crack his whip," or something like that; "it don't infringe."

Q. Do you not remember Mr. Everitt asking you to let him know when Stark came back?

A. No, sir; don't recollect any such thing.

Q. Well, you saw Stark back here after that, did you not, for months?

A. He was there; I cannot tell you how long.

Q. Until the 8th of May, 1878, was he not?

A. I cannot tell you.

360 Q. Well, for several months?

A. He was there for a month or two.

Q. And during the whole of that time, and when he was away, did you ever tell Mr. Everitt?

A. No, sir.

Q. Why did you not?

A. Because I had no occasion to.

Q. You knew that Mr. Everitt wanted to see him, did you not?

A. No, sir; he never told me he wanted to see me.

Q. Did not you know that they were both in there at the same time, and you never called Mr. Everitt's attention to the fact, but let Mr. Stark go out without Everitt's knowing it?

A. I know I never called his attention to the fact.

Q. Why did you not?

A. Because I had no occasion to.

Q. You had no occasion to?

A. No, sir.

Q. What! When you knew that Stark claimed to have a patent which he claimed was infringed upon by Mr. Everitt, and he was on here making threats to bring suit against you and against Mr. Everitt, do you mean to say that you had no occasion to tell Mr. Everitt that that was his antagonist, when they were both together in the same store?

A. Mr. Everitt did not seem to care anything about—

Q. Will you not answer that question?

A. He said: "Let him snap his whip, or crack his whip;" and, if this was the case, I did not think I had any right to interfere. I knew Mr. Kilburn always attended to the other thing; I did not meddle with it.

Q. Did not you think it was Mr. Everitt's right to know what this man was, and who he was, when he was theatening suit, as you have testified to?

A. I thought, from what Mr. Everitt said, that he did not care, and that he would let him snap his whip.

Q. And you did not think it was worth while to point the man out to him so that he might know him?

A. I do not know whether they were ever in there together. I am sure I cannot say now.

Q. If Stark was your antagonist, and threatening these suits, why were you keeping him in your establishment and around here for so many months?

A. You will have to go to somebody else for that explanation.

Q. That is your answer, is it?

A. That is my answer.

Q. Well, I am satisfied with it if you are.

A. I hope you are.

Re-examined by Mr. OTTERSON:

Q. Did Mr. Everitt ever ask you to intoduce him to Mr. Stark?

A. No.

Q. Did Mr. Stark ever ask you to introduce him to Mr. Everitt?

A. No, sir.

Q. Do you know of such a circumstance as the two being in the store together at the same time?

A. No, sir; I do not.

Q. When did you first hear of such a thing, if it was ever true?

A. Why in this office.

Q. In this examination—this minute?

A. Yes, sir.

Q. Did you ever hear of Mr. Everitt asking any one to introduce him to Mr. Stark?

A. No, sir.

Q. Or express any desire to make Mr. Stark's acquaintance?

A. No, sir.

361 HENRY S. HALE recalled and examined by Mr. OTTERSON:

Q. Did you ever give to Mr. Stevens any assignment to you, made by Stark, of the Stark patent, that he (Stevens) might take it to Washington?

A. No, sir; I never did.

Q. He says that the paper that Mr. Stark executed, called an assignment, was handed to you by him (Stevens), and he took it to Washington.

A. I never saw that paper that you have reference to.

Q. Did you ever take steps to cause Mr. Stevens' arrest, or did you ever threaten him with any such proceeding?

A. No, sir; I never did.

Q. Nowhere?

A. No, sir.

Q. Did you telegraph Mr. Mason, directing him to hold the record of any paper or assignment of the Stark patent held by him?

A. Never.

Q. Was there ever an interview in your office, on Sixth street, or in this city, in which it seemed to be necessary for such a telegram to be forwarded, and did you ever make the feint to forward any such thing?

A. I never did.

Q. Have you ever manufactured bedsteads, under this patent, with a removable bottom board?

A. We never have from the beginning to the end. We did not consider it practical to make them in that way. I understand that the movable bottom board is contained in Mr. Everitt's first claim, but we never used it.

Q. Have you a patent for the spring bed you use in your bedstead?

A. Yes, sir; we have a separate patent, which was taken out some time after we commenced to use the bedstead?

Q. Where is it?

A. It is here. (Letters patent No. 160,185, for improvement in bed bottoms, produced by the witness and offered in evidence by Mr. Otterson; the letters patent marked "No. 71, February 9, 1880, R. A. W.")

Q. Is that the bottom you use invariably in these bedsteads where a spring bottom is required?

A. That is the bottom we use principally; occasionally we use a bottom of some other man's invention.

Mr. OTTERSON: Under the call made upon me by the plaintiff, I now produce the silver medal from the Franklin Institute, with certificate.

The certificate is of date of October, 1874, No. 12, signed by Coleman Sellers, president, and William H. Wahl, secretary, "as a testimonial of the skill and ingenuity displayed in E. E. Everitt's patent folding bedstead."

The medal is inscribed, "Reward of skill and ingenuity of Hale,

Kilburn & Co., Philadelphia, Pa., for E. E. Everitt's patent folding bedstead."

(The certificate and the medal offered in evidence by Mr. Bowman, but not marked by the master, being considered sufficiently described.

Mr. BOWMAN (to the witness): Are the medals and testimonials you have produced here to-day all that you have in reference to the Everett bedstead and improvements?

The WITNESS: Yes, sir.

Mr. BOWMAN: Where is the Centennial medal?

The WITNESS: I have it here; that was given for house furniture, and is so stated on the diploma, which I will produce.

By Mr. BOWMAN:

Q. That covers the Everitt bedstead, does it not?

A. We had the bedstead there at the time.

Q. And you advertised the bedstead as having carried off the Centennial medal, did you not?

362 A. It may have been so; I suppose that was included in the medal.

Q. There was no other bed there except that, was there, that carried off the medal?

A. None that I know of.

Q. You have spoken about certain papers which were taken to Washington, and Mr. Otterson asked you whether Mr. Stevens took them, and I think you said no, did you not?

A. I said I did not hand them to Mr. Stevens.

Q. Who did hand them to Mr. Stevens?

A. I could not tell you. To the best of my knowledge, Mr. Kilburn took those papers to Washington himself.

Q. You are not sure about that?

A. No; I am not positive about that.

Q. What you are positive about is that you did not hand them to Mr. Stevens.

A. That I am very positive about.

Q. What papers have you reference to?

A. It is the first agreement or contract to purchase the Stark bed, I suppose they have reference to. That paper I never saw.

Q. What papers have you reference to when you say you did not hand them to Mr. Stevens?

A. Well, that is the paper.

Q. Then you have not reference to the specifications and assignment of the Stark patent?

A. Possibly Mr. Stevens may have referred to those papers as a whole; but I do not know whether he did or not. I never saw them.

Q. Who took those papers to Washington—the specifications and assignment of Stark's patent?

A. I say that my impression is that Mr. Kilburn took them to Washington.

Q. They were witnessed and signed in your office, were they not?

A. I think they were forwarded from Washington to Philadelphia to be signed.

Q. And they were signed and witnessed in your office, were they not?

A. Yes, sir; according to the witnesses I should say they were.

Q. Do you know as a fact that they were?

A. I should say they were, although I never saw those papers. It would not be very likely that Mr. Roberts and Mr. J. B. Kilburn would go to Washington to sign those papers. They probably were done in our office.

Q. And the only means you have of knowing that they were executed in your office you get from the signatures of the witnesses?

A. Yes, sir; I was very busy about that time, I know, and the only paper that I saw was the due bill I drew in my own handwriting, at the request of Mr. Kilburn.

Q. You had not much to do with the Stark arrangement, had you?

A. I was present a good deal of the time; yes, sir.

Q. If you were present when the most important papers were executed and acknowledged, would not you be likely to remember it?

A. I have just stated that I was not present when those were signed. I was present when a good deal of the talking was going on.

Q. I suppose it is very probable that a good deal was done and said which you have not remembered?

A. There might have been a good deal done and said which I did not see or which did not come under my notice.

Q. Do you pretend to remember all that was said and done about this Stark business which did come under your notice?

A No, sir; I do not.

Q. Who forwarded the papers to Washington?

A. I could not tell you that.

363 Q. Do you know anything about it?

A. Indeed I could not tell.

Q. Do you remember Stark and Stevens and Mr. Kilburn all going there together?

A. No, I do not remember that circumstance. I remember Mr. Kilburn going down to Washington, and, at the same time, that I heard it stated afterward that Stevens was there; but I really could not say positive.

Q. Do you remember when that was?

A. No, I do not.

Q. Do you remember telegraphing, or some of your firm telegraphing, to Washington to notify Mason not to put the specifications on record in the Stark patent?

A. There was no such telegraph ever left at our office, to my knowledge.

Q. Not to your knowledge?

A. Not to my knowledge. I certainly never wrote one.

Q. Do you remember a telegram being sent notifying Mason not to put the reissued specifications on record?

A. No, sir, I do not, and I am very positive there was none sent.

Q. Why are you so positive?

A. Mr. Stevens states that I wrote and sent one; that I know I am very positive about.

Q. Why are you so positive about it? You are not positive about other things that occurred at the same time.

A. Because I had no occasion to write any such telegram, and I know I never did.

Q. You know those papers were not put on record at that time, do you not?

A. They were not; no, sir.

Mr. OTTERSON (to Mr. Bowman): Do you mean the specifications now and the papers for a reissue?

Mr. BOWMAN: Yes, sir; and the assignment.

The WITNESS: I have reference to the formal assignment.

By Mr. BOWMAN:

Q. Why was it not put on record? Was it not by virtue of some order or direction from the defendants?

A. From Mr. Mason it was.

Q. As counsel for the defendants?

A. As I understand it, it was so that the title of the patent should not go out of Stark's name, and Mr. Mason was to hold the formal assignment as an escrow.

Q. What do you mean by an escrow?

A. As I understand by that, it is not to be an assignment until it is delivered; not to be considered so.

Q. Do not you mean to say that the object was to keep everything from the record which would show an assignment from Stark?

A. The only object was just what I stated, so that the title would not go out of Stark's name, and so that Mr. Stark could bring a suit in his name; and he so ordered Mr. Mason, as I understand it.

Q. But the title did go out of Stark's name, and you executed the papers taking it out of Stark's name?

(Objected to by Mr. Otterson, because that is a question of law.)

Q. Did not you buy the Stark patent and pay for it, and were not the papers formerly drawn up and executed by Stark to you? Were not the papers regularly drawn up and prepared, assigning the title to you, and signed and witnessed by your firm?

A. Yes, sir; I should say it was.

Q. And you paid for it?

A. Yes, sir.

Q. And took a receipt for the money, did you not?

A. Yes, sir; but it was understood by all parties that Mr. Mason was to hold that assignment, and it was not to go into force as an assignment until it was delivered.

364 Q. And Mr. Mason was then your attorney and acting for you, was he not?

A. Yes, sir; he was also the agent of Stark at that time.

Q. If you were paying your money for a patent and taking an assignment of it, why were you so anxious to keep your title from the record, and why were you so anxious to have Stark sue you?

(Objected to by Mr. Otterson as not being cross-examination, and because whatever explanation the witness was able to give on this subject was given on a previous occasion, and there is no necessity for repeating it here.)

A. That is just what I was going to say, because I explained it on a former occasion.

Q. I would like you to explain again, if you were paying your money for a patent and taking an assignment of it, why were you so anxious to keep your title from the record, and why were you so anxious to have Stark sue you?

A. That was to see if it would not have some bearing on Mr. Everitt, as we were paying Mr. Everitt a very heavy royalty, an exorbitant royalty, for a patent which, to all appearances, was literally good for nothing, and we felt as though we ought to have some modification of that agreement, after being obliged to go to the expense of the Stark patent. Mr. Everitt always refused to do anything about it or to reduce his royalty one cent, and made the remark that before he would do so he would lose the whole of it.

Q. But you agreed to pay him that royalty, did you not?

A. Yes, sir; we supposed then, when we made that agreement, that we were buying a folding bedstead, and that there was no other such patented bedstead in existence; but we have found since that there were a great many bedsteads patented before that, and both of his claims were so narrow that they would hardly hold water, and we felt as though we had actually been swindled by Mr. Everitt in his selling us a patent that was so weak.

Q. You *see* you did not discover that Mr. Everitt's bedstead was worthless until you found his royalty was amounting to a large sum, and you wanted to get rid of it?

A. We did know it before; but we should not have objected to it in the least if the Stark and Maine patents had not come up.

Q. If his patent was entirely worthless, and he was swindling you, why did not you stop paying him the royalty; why did you resort to all this scheming and manœuvring to prevent him getting his royalty?

Mr. Otterson: I object to the counsel for the plaintiff using the words scheming and manœuvring, as offensive.

Mr. Bowman: I did not object when your client accused mine of swindling him. I allowed your witness to call Mr. Everitt a fraud; however, you have put your objection on record, and now the witness will answer the question.

The Witness: I do not mean to say here that Mr. Everitt swindled us in point of law; but I do say that he sold us a patent that was just as near good for nothing as could be. We supposed when we bought that patent that we were buying a folding bedstead, and that there was no other folding bedstead in existence.

Q. Do you mean to say that you bought Mr. Everitt's patent?

A. I mean to say when we made the agreement with Mr. Everitt he sold it to us subject to a royalty.

Q. He sold it to you subject to a royalty. Do you mean to say that?

A. That is what I understand.

Q. Do you mean to say that he sold you his patent subject to a royalty?

A. Well, that was the time we made the agreement with Mr. Everitt, and that is what I supposed.

Q. If you thought the Everitt bedstead was a swindle, why did you manufacture and sell so many of them. Were you willing to link yourself to a swindling thing?

365 Mr. OTTERSON: The witness has said no such thing. He has not spoken of the bed as a swindle in my hearing, but he has spoken of the contract that Mr. Everitt made with them being under a misrepresentation, inasmuch as they were not informed of the existence of any other patents covering the same subject-matter.

The WITNESS: That is exactly what I mean.

Mr. OTTERSON: The bed itself was not a swindle.

Mr. BOWMAN (to the witness): Now, as Mr. Otterson has had his remark put upon record, and as you have agreed with him, I will have an answer to my question despite Mr. Otterson's objection.

The WITNESS: I did not say that it was a swindle.

Mr. BOWMAN: I will have the testimony read by the stenographer.

The STENOGRAPHER: The testimony is, "We supposed then, when we made that agreement, that we were buying a folding bedstead, and that there was no other such patented bedstead in existence; but we have found since that there were a great many bedsteads patented before that, and both of his (Everitt's) claims were so narrow that they would hardly hold water, and we felt as though we had actually been swindled by Mr. Everitt in his selling us a patent that was so weak."

Mr. BOWMAN: Now, after listening to what has been read by the stenographer, answer my question: If you were feeling that you had been swindled by Mr. Everitt by this patent of his, which you say was utterly worthless, why were you willing to manufacture so many of them, and continue in the manufacture for so many years?

A. We felt as though by Mr. Everitt not informing us of the Stark and Maine patents at first, which, if he had done, we could have bought them, probably, for a song—the Stark patent at least—and then made the thing strong, and he not having them, we felt as though we were paying him an enormous price. I would just say here that I do not say it was a swindle, and do not mean to be understood in that way.

Q. If Mr. Everitt's patent was so worthless, as you have said, why were you still willing to pay him royalty, even after you had bought Stark's patent?

A. Of course we were willing to divide the thing up—to fix the thing up with him if we could—but he refused to do anything.

Q. Even after you had Stark's patent, did not you continue to pay Mr. Everitt royalty on his patent to the full amount?

A. I believe we did according to agreement.

Q. Do not you know you did?

A. Yes, sir; I think we paid him up to the time of the notification of the Stark suit.

Q. If Mr. Everitt's patent was worthless, why did you pay him this royalty?

A. Well, we had the agreement before us, and of course we thought best to pay it.

Q. But you did not agree to pay him for a worthless thing, did you?

A. No, sir; but we did pay it.

Q. And the fact that you did pay it is the only reason you can give for paying it, is it?

A. Yes, sir.

Q. And at the very time you were paying it, you were the owner of the Stark patent?

A. The title was not in our name.

Q. You mean that your name was not on record, do you not?

A. Yes, sir.

Q. But it was in your name, was it not?

A. It was in our name, but it was not delivered, and was not to be considered ours until delivered.

Q. Was it not to be delivered to your attorney, Mr. Mason?

A. It was held as in escrow by Mr. Mason; and Mr. Stark was to engage Mr. Mason as his agent to commence the suit and proceedings just as they have been done.

366 Q. Was not Mr. Mason your attorney also?

A. Yes, sir.

Q. And did not you pay him for that work?

A. Yes, sir; we did.

Q. Then how was Mr. Mason Stark's agent and attorney?

A. All I know about that is what Mr. Mason says.

Q. He could not serve both sides, could he, in the same suit.

A. All I know is what Mr. Mason said.

Q. What do you mean by holding papers in escrow?

A. Just as I said before; I am not familiar with the term.

Q. Where did you get that term from?

A. The first I heard of it was in this connection.

Q. Where did you first get that term; I want to know something about it. I thought I understood what holding papers in escrow meant, but I confess I do not understand its application in this case?

A. I am not a lawyer myself, and could not tell you.

Q. You used the word "escrow," and where did you get it from?

A. I heard it first in connection with this case.

Q. Who told it to you first?

A. I heard it in connection with this affair.

Q. From whom?

A. Possibly Mr. Kilburn might have spoken to me about it on his return from Washington that Mr. Mason was to hold it in that

manner, and that it was to be considered an assignment until it was delivered.

Q. Are you quite sure that is where you got that word from?

A. I say possibly he might.

Q. Then you are not sure of it?

A. I am not sure of it; possibly the first I saw of it might have been on the assignment that was sent to us. I cannot say as to that. I know that was the understanding that it was to be held that way from the beginning.

Mr. OTTERSON: We close.

Adjourned until Monday next, Feb. 16, 1880, at 3 p. m.

PHILADELPHIA, MONDAY, *Feb. 16th*, 1880.

Parties met at the office of the master.

Present: The master, Mr. Otterson, Mr. H. S. Hale, Mr. Bowman, and Mr. Everitt.

Plaintiffs' Rejoinder Evidence.

DAVID W. MCELROY sworn and examined by Mr. BOWMAN:

Q. What is your business?

A. At present I am unemployed; I was a clerk in the Philadelphia post office a few weeks ago.

Q. Were you formerly in the employment of the defendants, The Hale & Kilburn Manufacturing Company?

A. No, sir; I was in the employ of Hale, Kilburn & Co.

Q. When did you leave their service?

A. I cannot recollect; I do not remember.

Q. What were you working at there?

A. Well, the last time I was there I was working fitting those Everitt beds, and getting them ready for shipment.

Q. Are you familiar with the spring bottoms used in those beds?

A. Well, I was at that time—the springs used at time. I have been informed they are different now.

Q. Never mind your information; speak only of your own knowledge.

A. I was at the time I left there.

Q. Will you state whether or not those spring bottoms differed from the spring bottoms used in other beds?

A. Well, they were made a little different; they were made alike, but there was a difference in the way they were finished;
367 that is, fitted. Those that were for ordinary beds had ties on the bottom, or cross-ties, which those for the spring beds had not.

Q. Those for the Everitt bed had not the ties on the bottom?

A. No.

Q. Look at those cuts (the drawing pinned on page 11 of Exhibit No. 68 and the drawing above it shown witness) and be kind enough to state which of those drawings represents the bottom for the Everitt bed.

A. This drawing (referring to the piece pinned on page 11 of Exhibit No. 68).

Q. That represents the bottom of the Everitt bed?

A. Yes, sir.

Q. What does the other cut, printed on the page of the book just above the one you have indicated, represent?

A. It represents the spring bottom for an ordinary bed.

Q. Can you explain as to how these bars (referring to the drawing) are made to fit in the bedstead?

A. Yes, sir; there was at that time an iron saddle that was fastened on the side of the bed, and these slats fit into these castings.

Q. Was there any difference as to the length between the front one and the others?

A. Yes, sir; the one at the head was shorter, cut off shorter than the others, and, I think, was narrower.

Q. Then in those respects they differed from the ordinary bottom in an ordinary bed?

(Mr. Otterson objected to the witness being led and coached in this way.)

Q. Is that so; in the respects you have mentioned the bottoms for the Everitt bed differ from the bottoms used in the ordinary bed?

A. In the respects I have mentioned; that is, in the ties and this fitting in saddles.

Q. Are the bottoms for the Everitt bed made expressly for that bed, to fit in there, and so on?

(Objected to by Mr. Otterson.)

A. They are, because the top one is narrower and shorter.

Q. I call your attention to the bed No. 3, on page 6 of this exhibit, No. 68, showing a bed with a looking-glass front. Please state whether those beds, finished as this cut represents, were manufactured by the defendants, and finished in the way represented in this cut, for their stock in trade?

A. Yes, sir.

Q. I call your attention to one in ebony, on page No. 15 of the same exhibit; can you state whether those were manufactured in ebony finish also for their stock in trade?

(Objected to by Mr. Otterson.)

A. That is the way they were finished; some of them.

Q. That is, the ebony finish?

A. Some of them were finished in ebony, some plain, some different woods.

Cross-examined by Mr. OTTERSON:

Q. Do you say they were beds finished in ebony and gilt in the time you were in the employ of Hale & Kilburn?

A. Not the entire bed. They were finished—that is, the mouldings, etc., were finished in ebony.

Q. Were the beds finished in ebony while you were in the employ of Hale, Kilburn & Co.?

A. Some of them were.

Q. Were they so made up and kept in stock ready for sale, or were they finished in that way to suit the taste of the particular customer who ordered them?

368 A. That I cannot answer, because I merely had the finishing of them after they were finished. Of course, I knew nothing about their order books. All I done was to put the finishing in after they came to me.

Q. When you say "finishing them after they were finished" you mean adapting them to the particular taste of a particular customer?

A. No, sir; I mean putting the fixings in; the particular things—the saddles.

Q. I am talking about the ebony finish?

A. They came to me finished with the ebony or the fancy woods; but whether they were for regular stock or for particular customers I cannot say.

Q. Tell us, to avoid confusion, what your particular duty was in that connection; for what were you employed?

A. I was employed, I suppose, to do whatever I was told; but what I did was to fit these beds and get them ready for shipment.

Q. What do you mean by fitting the beds—getting them ready for shipment?

A. Yes, sir; that was one thing, and putting in the saddles on which the springs rested, the cast-iron saddles, and the weights and springs.

Q. And then it was no part of your duty to finish the ornamental part of the bedstead?

A. No, sir.

Q. Do you know whether the defendants had on their floors for sale, and in stock, bedsteads finished in the manner indicated by you?

A. They had them there, but whether they were ordered or whether they were in stock I cannot say.

Q. How many did you see there at a time?

A. There were a great many, but I could not keep the run of them.

Q. I mean, how many did you see on the floor of their sales-room at any time?

A. There might be one or two to-day, and none to-morrow.

Q. Whereas there might be a dozen or twenty of other finish?

A. Yes, sir; of all finishes and of all styles.

Q. You were inquired of whether they kept those with mirror fronts in stock?

A. Yes, sir.

Q. Do you know whether they did that?

A. They had them in the show-room, but whether in stock or not I cannot say.

Q. Did not you know of their changing and taking out the palne fronts and putting in the looking-glass fronts to suit their customers?

A. No, sir; I did not.

Q. How many, with looking-glass fronts, did you ever see upon their floor at any one time?

A. One or two at a time.

Q. Did you ever see as many as two?

A. I think I did; I am not positive.

Q. You are not positive that you ever saw more than one?

A. At a time.

Q. And was that for any other purpose than to show a mode of finishing?

A. I cannot tell you whether they were for sale or whether they had been ordered.

Q. How long has it been since you left there?

A. I cannot remember; I think it was in 1875 that I left there.

Q. These springs that you have spoken of were just as easily adapted to any other bedstead, and used in any other bedstead, as in the Everitt bedstead, were they not?

A. I suppose they could have been made that way by putting these cross-ties on.

Q. What do you mean by "cross-ties?"

A. Strips put on the bottom of the springs similar to that. (Referring to the first cut on page 11 of Exhibit 68.) They were strips upon which the springs rested.

Q. Do you mean to say that those strips in these beds are used in place of webbing in other beds?

369 A. I suppose that is the idea.

Q. Do not you know? If you do not know, just say so, and do not let us have an evasion.

A. I do not know, because I never fitted any of those beds there.

Q. What bed?

A. The bed shown in the cut just mentioned. (The first cut on page 11 of exhibit 68.)

Q. You say that this spring is adapted to any bedstead, or could be fitted in any bedstead, as well as the Everett bedstead?

A. I said this (referring to the first cut on page 11 of exhibit 68) was made for others and not for the Everitt bedstead; and this (referring to the drawing pinned on page 11 of exhibit 68) was made for the Everitt bedstead.

Q. But is not this latter as easily adapted to any other bedstead as the Everitt bedstead?

A. I suppose it would be with these additions.

Q. With what additions?

A. The addition of those strips. These (referring to the piece pinned on page 11 of exhibit 68) are made to fit in the saddles.

Q. There is nothing in the spring bed, then, except the mode of fitting, which is different from any other?

A. They are finished different. I call that finished, putting those cross-ties on.

Q. That is merely a means of finishing?

A. Yes, sir.

Re-examined by Mr. BOWMAN:

Q. Please tell us whether the bed, to be complete, does not require either a spring or slat bottom?

A. The Everitt bed?

Q. Yes, sir; whether the bed, to be complete, does not require a bottom of some kind, either a spring bottom or a slat bottom?

A. Yes, sir; it requires some bottom.

Q. In order to be complete, without a bottom, there would be no place to lay the mattress on, would there?

A. No, sir; it would fit against the wood part of the bed.

Q. Then the bottom is a very important part of the bed, is it not?

(Mr. Otterson objects to this mode of questioning the witness.)

A. I should judge so.

NATHANIEL R. HARRIS sworn and examined by Mr. BOWMAN:

Q. What is your business?

A. I am a designer of furniture; and, in fact, a designer of anything, where designing is necessary.

Q. Were you in the employ of the defendants?

A. Yes, sir; I was engaged with Hale, Kilburn & Co. at one time, some two years ago.

Q. Were you employed by them to make designs in connection with the Everitt or Champion bed?

A. Yes, sir.

Q. Did you have anything to do with the designs in connection with the ebony-finish beds, or any of a different finish?

A. Yes, sir; the mere matter of ebony finish, or mahogany finish, or rose-wood finish, or any of those finishes, is about one and the same thing. They have to be finished in the ordinary finish after the color is applied to any bedstead or piece of furniture.

Q. Different finishing would simply have a different influence as to the different prices. A highly-finished bed would have a higher price than an ordinary finished one?

370 (Objected to by Mr. Otterson.)

A. That is all.

Q. Can you state whether the bottoms in use in the Everitt bed differ from the ordinary bottom of an ordinary bed?

A. Oh, yes; entirely different.

Q. Can you state whether or not the bottom of the Everitt bed is an important part of his bed?

A. It is one of the important points of the bedstead—of the press bed, or the wardrobe bedstead, or the Everitt bedstead—whatever name you choose to call it. I do not know what name you gentlemen call it.

Q. State whether or not the bed could be used without a bottom.

A. Well, if it had no bottom, it would not be a bed—certainly not, in my way of looking at it.

Q. Without a bottom there would be nothing to lie upon but the front or casing of the bed, would there?

A. Certainly not.

Q. And the casing is made of very thin material, is it not?

A. Very thin material, and would not support the weight; certainly not support the weight of two individuals which would lie upon it.

Q. You made the designs for this bed, did you not?

A. Yes, sir; I do not know for these, but I made the designs. I think I made the first. I think I made the design for the bedstead that was exhibited in the Franklin Institute—that I know—which I believe the gentleman here, Mr. Harry S. Hale, got the premium for.

Q. Please state whether you made the design for the bed which has a mirror in front.

A. No, sir; I do not know that I ever saw a mirror-front bedstead; but that is easily adapted by only taking the panel out and putting the glass in.

Q. I call your attention to the cuts Nos. 3 and 12, on page 6 of Exhibit 68. Please state whether or not those beds were designed for mirror fronts.

A. I could not swear that they were designed for mirror fronts, because in the ordinary run of trade cabinet manufacturers occasionally, when customers desire it, take out wooden panels and put in glass ones, or take out glass panels and put in wooden ones. The design of the piece of furniture where glass or wooden panels may be requested makes no difference to the designer whatsoever, not as to the original construction. That is merely a fancy in regard to the purchaser or sellers. I could not swear that that was made expressly for glass, although it may have been so.

Q. Please tell us, referring to cut No. 3, whether, in a bed designed, as this one is, with panels or glass in it, if finished with glass, in your judgment, the mirror would be a part of the bed.

A. It would answer the purpose of a wooden panel. That is about all, with the exception that it reflects objects.

Q. Would it or would it not be a part of the bed?

A. Undoubtedly it would be a part of the bedstead.

Q. And if the wooden panel was used instead of the mirror, would or would not that panel also be a part of the bedstead?

A. Precisely the same as the mirror, with the exception of the reflection.

No cross-examination.

HUGH MCCOMB, Jr., sworn and examined by Mr. BOWMAN:

Q. What is your business?

A. I am employed in the firm of Hale & Kilburn Manufacturing Company.

Q. Have you charge of any special department?

A. Of the folding bedstead department, packing and shipping.

Q. Please look at this drawing (the drawing pinned to page 11 of Exhibit 68 shown witness) and state what it represents.

371 A. A spring for folding bedstead.

Q. What bed?

A. What do you mean by "what bed;" what number of bed; what quality of bed?

Q. I do not care. You can give me the number. I have not asked you for a number, but you can give it to me if you want to. You say that this is a spring bottom for a folding bed.

A. That explains all.

Q. Will you state whether or not this is a spring bottom for the Everitt bed?

A. It is a spring bottom for the folding bedstead, whether it is Everitt's bed or any other bed. It can be applied to a folding bedstead.

Q. I have not asked you that, and you will be kind enough to answer my questions. I want you to state whether or not that cut, to which I have called your attention, represents the spring bottom for the Everitt bedstead?

A. Yes.

Q. Why could not you have said so without all this trouble?

A. You said "bedsteads."

Cross-examined by Mr. OTTERSON:

Q. Is that spring adapted only to the Everitt bedstead?

A. No, sir; that spring is adapted to the Hale & Kilburn bedstead, and to the Everitt bedstead, so called.

Q. Can the bed not be used in any form of bedstead?

A. You mean the spring?

Q. Yes, sir.

A. Yes, sir; the spring can be used in any form of bedstead by simply putting a strip on the bottom.

Q. And is not the difference between that spring bottom and the ordinary spring bottoms of the trade a mere difference of adjustment of the springs to the bedstead; is not the difference between that spring and the ordinary spring bottom used in the furniture trade a mere difference for the purpose of adjusting it to the bedstead it may be wanted in?

A. Yes, sir.

Q. Could not a bed spring, which has been adapted to the Everitt bedstead, be taken out and as easily adapted to any other bedstead as it was first adapted to the Everitt bedstead?

A. Yes, sir.

Q. Then there is nothing peculiar to the spring?

A. No, sir; you can fix up the bed with them, and you could not tell the difference between them lying down on the floor.

Re-examined by Mr. BOWMAN:

Q. You say the only difference is the adjustment?

A. Of the springs.

Q. Do they not have to be made differently in order to adjust them?

A. I said simply by putting the strip on the bottom.

Q. Please answer my question "yes" or "no;" do not the springs have to be made differently in order to make the adjustment which you speak of? That is a simple question.

A. Well, the way I look at it——

Q. No. I do not want the way you look at it.

Mr. OTTERSON: I do not want the witness intimidated.

Mr. BOWMAN: The witness will not be intimidated by me or anybody else. (To the witness): I want an answer to that question, yes or no.

A. No.

Q. You say "no?"

A. Yes, sir.

372 Q. Very well, that is an answer. You mean to swear that these two spring bottoms represented in this exhibit (the piece pinned to page 11 of Exhibit 68, and the cut immediately above it) are made exactly alike?

A. They are made exactly alike, with the exception of the strip running longitudinally along the bottom of the cross slats.

Q. You mean to say that those cross-bars in the drawing of the upper spring are the same as the cross-bars in the lower spring, which you say is the spring of the Everitt bed?

Mr. OTTERSON: I object to that question as leading, and I object to the counsel cross-examining his own witness.

Mr. BOWMAN: My answer to that is that this is a very willing witness for the defendant, and that I think under the circumstances my questions are perfectly proper

Mr. OTTERSON: And my answer to that is that the plaintiff has called the witness and he has no right to impugn him, and that the testimony of the witness does not give the counsel for the plaintiff any license to violate the rules of evidence.

Mr. BOWMAN (To the witness): Now, what is your answer?

A. I do not know as I have any answer to give—do you mean the bar which runs across the bed and has the springs upon it?

Q. Yes, sir.

A. Yes, sir; that bar (referring to the first cut) is the same as that bar (referring to the drawing pinned to page 11 of Exhibit 68); it has the same thickness and the same width.

Q. Are the ends made the same?

A. They are. They are all cut off square.

Q. And the ends in both springs are made to fit in the same kind of saddle, are they?

A. Yes, sir.

Q. Do you mean to say that the cross-bars in this upper spring are made to fit in saddles?

A. Just as much as in the lower one, if you apply the saddles to the bed.

Q. Will you please answer my question? I have asked you a simple question.

A. And I answered you, yes.

Q. No, sir; you did not. Now your answer is yes, is it?

A. Yes, sir.

Q. Did you ever know any saddles to be applied to the bed on which this upper spring is used?

A. Yes, sir.

Q. The same as are used in the Everitt bed?

A. Yes, sir; as was used in the Everitt bed.

Q. Do you mean to say the bars of both of those springs are the same length?

A. The head bar of the folding bedstead is a trifle longer than the rest.

Q. That is, there is a difference in the length of all of them, is there not, made to suit the bed?

A. No; there is a difference in one of them.

Q. The head one is a little longer than the others to fit into the bed?

A. Yes, sir.

Q. Then I understand you to say that the springs for the Everitt bedstead have no slat running lengthwise, and have one cross-piece longer than the springs used in the other bed—that is it, is it not?

A. That is it; certain sizes.

By Mr. OTTERSON:

Q. And those peculiarities are merely for matters of adjustment?

A. That is all.

373 Mr. BOWMAN: I have here a pamphlet, which was referred to in the cross-examination of Mr. Everitt by Mr. Otterson, in which Mr. Everitt stated he noticed certain advertisements by these defendants, and that he saw them in an illustrated catalogue. Mr. Everitt was called upon to produce the catalogue; he now does so, and I offer it in evidence.

(The catalogu marked "No. 72, February 16, 1880, R. A. W.")

I also offer in evidence the price list that accompanied it.

(The price list marked "No. 73, February 16, 1880, R. A. W.")

I also offer in evidence three price lists of the defendants pinned together.

(The price lists each marked "No. 74, February 16, 1880, R. A. W.")

I offer them for the purpose of showing the printed declarations of the defendants as to their selling the Everitt bed with the springs and bottoms, and I call special attention to the paragraph which states that no beds are sold without the bottoms.

I also offer in evidence a certified copy of the oath of Andrew Stark in the matter of the reissue of letters patent granted to him.

(The certified copy marked "No. 75, February 16, 1880, R. A. W.")

Mr. BOWMAN: I now call upon the defendants to produce their

answer of April 10, 1878, to the letter of R. Mason to them. I also call on them to produce the answer of R. Mason to their letter of April 10, 1878, the answer being dated April 11, 1878.

I also offer in evidence the letter from the defendants to Mr. Everitt, dated October 9, 1877, with the envelope with which it was inclosed.

(The letter and the envelope each marked "No. 76, February 16, 1880, A. A.W.")

Adjourned until Monday next, February 23, 1880, at 3 p. m.

The meeting, which was arranged for Monday, February 23rd, 1880, was not held on account of the day being a legal holiday, the Sunday preceding being Washington's birthday; but it was understood between counsel and the master that a meeting should be held on Friday, February 27th, 1880, at 8 p. m.

PHILADELPHIA, FRIDAY, *February 27th*, 1880.

Parties met at the office of the master.

Present: Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale; present, also, Mr. Asher B. Stevens.

DAVID P. HOLLOWAY affirmed and examined by Mr. MITCHELL:

Q. Where do you reside?

A. Temporarily in Washington city; my legal sidence is in Indiana.

Q. What is your occupation—attorney, is it not?

A. I am a solicitor of patents.

Q. Did you formerly hold any office in the Patent Office?

A. I was Commissioner of Patents for five years—for nearly five years.

Q. When?

A. From 1861 to 1865.

Q. Have you ever held any other office under the United States Government?

A. I was a member of Congress at one time.

374 Q. What was your occupation in 1878?

A. Solicitor of patents.

Q. Where was your place of business?

A. 514 9th street N. W., Washington city.

Q. Are you acquainted with the defendants, the Hale & Kilburn Company, or with any of the persons composing that corporation?

A. I have met Mr. Kilburn.

Q. Do you remember his first name?

A. I do not know it.

Q. Was it Cheney Kilburn?

A. I do not remember his first name.

Q. Are you acquainted with Mr. Henry S. Hale, the treasurer?

A. Not that I know of.

Q, Did you have any dealings with them in the month of February, 1878?

A. Our firm had; yes, sir.
Q. What was the name of that firm?
A. D. P. Holloway & Co.
Q. What business relations did you have with them in February, 1878?
A. Soliciting patents.
Q. What particular patent did you have on hand at that time?
A. We had the reissue of a patentee named Lee.
Q. What was that?
A. For a bed lounge, and one for Mr. Stark.
Q. Do you remember the first name of Mr. Stark?
A. I do not.
Q. When did you have the Stark patent?
A. In 1878, I think.
Q. Do you remember what month it was?
A. I can only say it was in the spring of the year.
Q. Look at the paper which I show you (letter of February 27, 1878, written under the printed heading of "Office of the Hale & Kilburn Manufacturing Company" shown witness, it being stated by Mr. Mitchell that all the letters to be shown the witness in the course of the examination of this afternoon are written under the same printed heading of "Office of the Hale & Kilburn Manufacturing Company"), and tell me where that paper came from.

Mr. OTTERSON: I do not see what this will lead to; but at the present it would seem that the witness had occupied confidential relations with the defendants, as their counsel. If that is so, I object to his being further examined on this subject.

By Mr. MITCHELL:

Q. Are you a member of the bar?
A. I am not.
Q. Have you ever been admitted to the bar?
A. I have not.
Q. Can you remember when you received that letter, if you ever did receive it?
A. I do not remember the circumstances of getting that letter.
Q. Did you ever see this letter before?
A. Yes, sir.
Q. Where did I get it?
A. I suppose you got it from our office—not you personally, but it came from our office.
Q. Where was it found in your office?
A. In the regular file of the Hale & Kilburn Manufacturing Company.
Q. In their correspondence with your firm?
A. Yes, sir.
Q. Was it received by your firm?
A. It was.
Q. You cannot say how, can you?
A. No, sir; I have no recollection of any particular letter.

375 (The letter offered in evidence by Mr. Mitchell, and marked "No. 77, February 27th, 1880, R. A. W., and read by Mr. Mitchell as follows:)

PHILADELPHIA, *February* 27, 1878.

Messrs. D. P. Holloway & Co., 514 Ninth street, Washington, D.C.

GENTLEMEN: Enclosed please find our check for eighty dollars for fees in Stark's reissue case. We also return herewith all the papers signed as requested, together with the original patent and the assignment to be recorded. We would like to ask you one question: If you secure the claims, as stated in the specification, will we not then be free from Everitt without altering the construction of our bed at all? We must get clear from Everitt if possible, and we prefer not to alter the bed if it can be avoided. We think you understand our position, and will act accordingly.

Very respectfully,

HALE & KILBURN MANUFACTURING COMPANY,
H. S. HALE, *Treasurer.*

Mr. Mason has the Everitt contract.

By Mr. OTTERSON:

Q. Who constituted the firm of D. P. Holloway & Co.?
A. Rodney Mason and D. P. Holloway.
Q. Is Rodney Mason a member of the bar?
A. He is.

Mr. OTTERSON: Then I object to all this line of testimony.

By Mr. MITCHELL:

Q. Look at this paper (paper shown witness) and say where that came from?

A. From the best of my knowledge and belief it came from our office—from the files of Hale, Kilburn & Company.

(The letter offered ine vidence by Mr. Mitchell, and marked "No. 78, February 27th, 1880, R. A. W.," and read by Mitchell as follows:)

PHILADELPHIA, *February* 28, 1878.

Mr. R. Mason.

DEAR SIR: Yours of yesterday is at hand. We think it best to drop the washstand for the present, as there seems to be such an almost endless variety. Mr. Stevens left for Washington last night, and took with him Stark's papers and check. You understand and we suppose that if Stark's patent can be made to cover Everitt we do not care to make any alterations in the bed or adopt any of Mr. Stevens' plans. The bed is just splendid as it is, and we hope you can fix us all right.

Yours, etc.,

THE HALE & KILBURN MANUFACTURING COMPANY,
Per H. S. H.

(The offer of the letter in evidence objected to by Mr. Otterson.)

By Mr. MITCHELL:

Q. I hand you a telegram. Where did I get it?
A From our office, I presume—from the same file of papers.

(The telegram offered in evidence by Mr. Mitchell, and marked "No. 79, February 27, 1880, R. A. W.," and read by Mr. Mitchell as follows:)

"PHILA., *M'ch 1st*, 187–.

"Received at 9.02.

"To D. P. Holloway & Co.:

"Wait till you hear from us before recording Stark's assignment.

"THE HALE & KILBURN MANUFACTURING COMPANY.

"10, p'd. Wm. O.

"This telegram has just been received at the Post Office Department, Washington, D. C."

(The offer of the telegram in evidence objected to by Mr. Ot-
376 terson, particularly to the addenda after the signature, because all that Mr. Mitchell read after that is from a printed blank on which the dispatch is written, and especially the words "Post Office Department, Washington, D. C.," being in purple ink.)

By Mr. MITCHELL:

Q. Please look at these letters and papers which I show you (a number of papers shown the witness), and say where they came from, and where you found them.
A. Those all came from our office.
Q. From the same file of papers?
A. Yes, sir.

(The letters shown the witness were then offered in evidence by Mr. Mitchell, being read by him, as appears in the testimony below; the letters respectively being objected to by Mr. Otterson.)

The first letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, *March* 15, 1878.

"Mr. R. Mason.

"DEAR SIR: We send you by express the model, which please look at and see if it will be of any service to us. You will see we have covered up the pillow place with an apron, which is self-operating and costing scarcely anything to put there; the brackets we have tapered off a little at the corners. The question may arise with you, why do we put it there, which we answer thus: We put it there to prevent pillows or anything else being put in that space whereby the bed might be pulled down and burst the hinges or pull the rod out. We really have had this very thing happen probably fifty times, and the consequence was we had to send a man to fix the bed.

After you have examined it, and if you do decide that it will be a benefit to us in the Everitt matter—if you will return the same to us we will hang it to a head board and put it into a little better shape. On the other hand, if it is not going to be a benefit, we do not care to do anything about it.

"Yours in regard to Stevens is at hand. We shall engage to fix the matter up with him. We have no desire to wrong him in the least.

"Respectfully,

"HALE & KILBURN MANUFACTURING COMPANY.

"H. S. HALE."

(The above letter marked "No. 80, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA *March* 4, 1878.

"Mr. R. Mason.

"DEAR SIR: Our royalty to Everitt becomes due on the 10th instant. What do you think about notifying us that we infringe on Stark, so we can have an excuse for postponing the payment of said royalty, you may think best about notifying Everitt also. We judge the patent will be issued on Tuesday, 9th instant. Can you fix it so we will get word, say not later than 10th. We have always paid his royalty very prompt, and, of course, we are anxious to have it cease soon as possible.

"Very truly yours,

"HALE & KILBURN MANUFACTURING COMPANY."

(The above letter marked "No, 81, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, 3–11–1878.

"Mr. R. Mason.

"DEAR SIR: Do you expect to be in Philadelphia soon; if so, would like to see you and show you a model wherein we have covered up the space which Everitt claims for pillows, &c., at a cost less than twenty-five cents. If you desire, we will send the model by express to you.

"Very truly,

"THE HALE & KILBURN MANUFACTURING COMPANY,

"Per H. S. HALE."

377 Mr. Stevens has severed his connection with us this day.

(The above letter marked "No. 82, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, *April* 8, 1879.

"Col. R. Mason.

"DEAR SIR: Will you be kind enough to mail us the Stark reissue patent and oblige.

"Very truly yours,

"HALE & KILBURN MANUFACTURING COMPANY.

"H. S. H."

(The above letter marked "No. 83, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, *April* 11, 1878.

"Mr. R. Mason, Washington, D. C.

"DEAR SIR: Yours of the 10th inst. is at hand, and, in reply, would respectfully ask you for a copy of Stark's patent (the reissue), that we may examine the same in reference to the infringement claimed by your client against us.

"Respectfully,

"HALE & KILBURN MANUFACTURING COMPANY.

"H. S. HALE, *Treas.*"

(The above letter marked "No. 84, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, —— —, 187–.

"DEAR SIR: We presented your letter to Mr. Everitt to-day, and per his request we write you for a copy of the reissue. You might answer stating when it will be out, and that you will forward a copy next week; we will show your answer to him and that will keep him quiet until the reissue comes to hand. We will inform you if anything new turns up in the meantime.

"Yours, etc., H. S. HALE."

(The above letter marked "No. 85, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"DEAR SIR: We received the copy of reissue this a. m., and notice that the signatures of two of our clerks are on it as witnesses. Does this not look bad to show to Everitt, as he knows both of them. Is there any way to change it We do not suppose there is, but the mystery to us is, if Everitt notices their names, which he will, what can we say to him as a reason why those names appear on the reissue. Please let us hear from you before we show it to Everitt.

"Very truly, H. & K. M'F'G CO."

(The above letter marked "No. 86, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, *June* 18, 1878.

"Col. R. Mason.

"DEAR SIR: We wrote you on 7th inst., at the Gilsey House, as requested, but have not heard from you yet. Will you write us on receipt of this in regard to the Everitt matter?

"We wish you would look the records over and see if letters patent No. 41986, dated March 22, 1864, and granted to Zebina E. Forbes for improved washstands, is still owned by him; if not, by whom? Also patent No. 56876, August 7, 1866, to D. W. Bashore for washstand and desk. We are unable to find either of these parties as yet.

"How does the second reissue of Lee's patent come on?

"Yours, very truly,

"HALE & KILBURN MANUFACTURING COMPANY.

"H. S. H."

(The above letter marked No. 87, February 27, 1880, R. A. W.")

378 The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, *July* 1, 1878.

"Col. R. Mason.

"DEAR SIR: Didn't we understand you that Everitt claimed the open hinge? In looking over a copy of his patent we are unable to find such a claim. Will you be kind enought to inform us how you got that impression, and whether he does really claim it or not; if he does we will alter and use something else. Date of his patent March 24, 1874, No. 148,940.

"Very truly yours,

"HALE & KILBURN MANUFACTURING CO.

"H. S. H."

(The above letter marked "No. 88, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"PHILADELPHIA, *July* 8, 1878.

"Col. R. Mason, Washington, D. C.

"DEAR SIR: Our attorney, Judge Otterson, says he won't send to the circuit court of the United States after the bill; that we understood you were to furnish a copy. Of course he don't know the whole story, and hence his refusal. Now, hadn't you better write to the clerk to either serve it upon us in the usual way, or have him him send it to James Otterson, No. 705 Sansom street. You see he thinks it is not our business to run after our own bills. We think best not to let him into the secret as yet. He understands it in this wise: That we are willing to pay seven per cent. royalty, no matter to whom we pay it. We paid the $6.15 to the clerk all right.

"Townsend telegraphed us to-day. We wrote him as stated in your letter.

"Very truly yours,

"H. S. HALE, *Treasurer*."

(The above letter marked "No. 89, February 27, 1880, R. A. W.")

Q. I now call your attention to three other letters. (Three letters shown witness.) Is the first letter which I have shown you one of the same batch of letters, and from the same place?

A. I think it is.

Mr. Mitchell then offered in evidence and read the letter, as follows:

"PHILADELPHIA, *April* 1, 1878.

"Messrs. D. P. Holloway & Co.

"GENTS: Yours stating that Stark's reissue has been allowed is at hand. We enclose you a circular of a bed made in Boston, the footboard of which forms the top cornice, and if it infringes on Stark's we would like to have you notify Mr. A. G. Frye, 36 Washington street, Boston, that such is the case. Mr. Mark Crosby is the inventor. Patented April 10, 1877. He sold his entire interest to Frye. Frye has just sold New York State to De Graff & Taylor, in Fourteenth street, below Sixth avenue, New York city. And hadn't this party also better have a notice? This bed seems to come nearer our bed than any we now know of, and hence the importance of stopping it if it is a clear case. Of course you would notify them in Stark's name, would you not? You know the assignment has not been recorded yet, and we had just as soon it would be done in his name as not. Of course you know best what to do, and what kind of a letter to write.

"Very truly,

"HALE & KILBURN MANUFACTURING COMPANY."

(The above letter marked "No. 90, February 27, 1880, R. A. W.")

(The objection of Mr. Otterson to the introduction of the letters in evidence renewed as to this particular letter.)

Q. I also show you two other letters, and ask you in whose handwriting they are?

A. They are in the handwriting of Colonel Rodney Mason.

Mr. Mitchell then offered in evidence and read the letters, as follows, each of the letters being objected to by Mr. Otterson:

379 "514 NINTH STREET, WASHINGTON, D. C., *May* 8, 1878.

"De Graff & Taylor, Fourteenth street, below Sixth avenue, New York, N. Y.

"GENTLEMEN: I forward herewith Patent Office copy of reissued letters patent to Andrew Stark on wardrobe bedstead, to which I invite your attention.

"I am informed that you are infringing this patent, and my instructions are to institute proceedings against all infringers who persist in manufacturing. I shall be glad to learn that you have concluded to desist from manufacturing; otherwise I ask you to refer me to your attorney.

"Very respectfully yours, R. MASON."

(The above letter marked "No. 91, February 27, 1880, R. A. W.")

"514 9TH ST., WASHINGTON, D. C., *May* 8, 1878.

"A. G. Frye, 36 Washington St., Boston, Mass.

"DEAR SIR: I forward herewith Patent Office copy of the reissued letters patent to Andrew Stark on wardrobe bedstead, to which I invite your attention.

"I am informed that you are infringing this patent, and my instructions are to institute proceedings against all infringers who persist in manufacturing. I shall be glad to learn that you have concluded to desist from manufacturing; otherwise ask you to refer me to your attorney.

"Very respectfully yours, R. MASON."

(The above letter marked "No. 92, February 27th, 1880, R. A. W.")

Q. I show you another letter (letter shown witness); do you know where it came from?

A. It is from the same collection of letters; from our office file.

The letter offered in evidence by Mr. Mitchell, under objection by Mr. Otterson, and read by Mr. Mitchell, as follows:

"PHILADELPHIA, *February* 23*d*, 1878.

"Mr. R. Mason.

"DEAR SIR: Mr. Stark says his foot-board does not turn the corner like Everitt's, except that it don't form much of a place for pillows. Have you seen his model? Perhaps it would be well to take a look at it

"Yours, &c.,

"THE HALE & KILBURN MANUFACTURING COMPANY,

"Per H. HALE, *Treasurer*."

(The above letter marked "No. 93, February 27th, 1880, R. A. W.")

HENRY S. HALE recalled and cross-examined:

(The examination objected to by Mr. Otterson.)

By Mr. MITCHELL:

Q. Did you write and send that letter (Exhibit No. 92 shown witness)?

A. Yes, sir; I wrote that letter.

Q. Did you write and send these letters (Exhibits 91 and 93 shown witness)?

A. I wrote those letters.
Q. Did you send all the other letters which bear your signature?
A. I wrote those letters, but I did not send them.
Q. They are all in your handwriting, are they not?
A. I wrote them, and I gave them to our clerk to mail, and I suppose he sent them.

By Mr. OTTERSON:

Q. You were in correspondence, then, with your private counsel, Mr. Mason, were you not?
380 A. Yes, sir.
Q. And no one else?
A. That is all; he was so employed.

Examination of DAVID P. HOLLOWAY resumed by Mr. MITCHELL:

Q. Did you yourself have anything to do with the management of the patents for folding beds of the Hale & Kilburn Company?
A. No, sir.
Q. Who came down to Washington besides the members of the firm to see about this business?
A. Mr. Stevens and Mr. Kilburn were there at one time.
Q. Do you see Mr. Stevens here?
A. Yes, sir.
Q. The same Stevens that was there (referring to Mr. Asher B. Stevens, the witness previously sworn in this case)?
A. Yes, sir.
Q. Was Mr. Stevens down more than once?
A. Frequently.
Q. On this business?
A. I think he was there several times in regard to lounge business, and was there in regard to business of his own, a chair and other things of that kind.
Q. Do you know in whose employ Mr. Stevens was at the time?
A. I do not know.
Q. Do you know in whose interest he came?
A. In the interest of the Hale & Kilburn Company.
Q. He came, then, to see what had been done in the interest of Hale, Kilburn & Company?
A. Yes, sir.
Q. You said "lounge" a moment ago; did you mean lounge?
A. I meant a bed lounge.
Q. What is called a bed?
A. Yes, sir; a wardrobe bed.

By Mr. BOWMAN:

Q. Do you remember who came to Washington to see your firm first in reference to this matter of Everitt's bedstead as connected with Stark and his appearance?
A. I think Mr. Stevens.

Q. Do you remember whether Mr. Mason was at home on that occasion?

A. I cannot say whether that was the special time that he was not there. I know Mr. Stevens was there at one time when Mr. Mason was not there.

Q. Do you remember where Mr. Mason was at that time?

A. At New York.

Q. Do you remember whether or not you telegraphed to Mr. Mason?

(Objected to by Mr. Otterson as incompetent.)

A. I do.

Q. Did you telegraph him at New York?

A. I did.

Q. Did you by telegram notify him to stop on his way back in Philadelphia and see the defendants?

(Objected to by Mr. Otterson as incompetent.)

A. I did.

Q. Did he stop on his return, and did he see them?

(Objected to by Mr. Otterson as incompetent.)

A. He told me on his return that he did.

Q. Do you remember the assignment of the Stark patent to the defendants?

A. I do.

Q. Will you be kind enough to state who brought that paper to your office in Washington?

381 A. I cannot say that I can answer that question. It came to my table, as I attended to that part of the business. I read the assignment.

Q. But you do not now remember who brought it there?

A. No, sir.

Q. When did you first see it?

A. I cannot give the date; my recollection is confined to the discovery of the Stark patent and the disposition to purchase it; and I understood they did finally purchase it, and the assignment was sent there for record, and it was put in my drawer with a view of sending it to the Patent Office to record.

Q. Do you remember Mr. Kilburn, Mr. Stark, and Mr. Stevens visiting your office together, in Washington, with reference to the Stark business?

A. I do.

Q. Can you state how many times they were there together in in reference to the Stark business?

A. I can only recollect on one occasion.

Q. Do you recollect anything about the instructions in reference to changing the application for the reissue of the Stark patent?

(Objected to by Mr. Otterson.)

A. My understanding was that the reason it was changed was

because he had sold some counties in Missouri, and could not assign the entire interest, whereby Hale, Kilburn & Co. would be entitled to the issue.

Q. Who attended to that part of it; who attended to the preparations of the papers for the reissue?

A. Colonel Mason.

Q. Do you know what became of that assignment?

A. I think it was destroyed.

Q. In what way?

A. I cannot say.

Q. Do you know anything about the arrangement to notify the defendants that they were infringing upon Stark's patent?

A. I do not, except by correspondence.

Q. Correspondence with whom?

A. Hale, Kilburn & Co.

Q. Is that correspondence here?

A. I do not know that it is.

Q. Will you state what that arrangement was?

(Objected to by Mr. Otterson.)

A. My impression is simply that he was authorized to give notice of the infringement.

Q. Who—that Mason was?

A. Yes, sir.

Q. That Mason was authorized to give notice of the infringement?

A. Yes, sir.

Q. Who authorized him to give notice of that infringement?

A. I infer, from correspondence, that it was Hale, Kilburn & Co.

Q. Was this after they had bought the Stark patent?

A. I think so. I do not know when they bought it, but I presume that was the fact.

Q. Do you remember as to whether the assignment and specifications of the Stark patent and reissue were sent on to the defendants in Philadelphia to be executed by them?

A. In the Stark patent?

Q. Yes, sir.

A. I think they were.

Q. Who brought those to you, after they were executed?

A. I cannot say.

Q. If you were to see a letter, would that refresh your recollection on the subject?

A. It might; I do not know.

Q. Was the letter dated February 28, 1878, written by Mr. Harry S. Hale, received by you?

382 A. I presume it was; it was taken from our file.

Q. That letter says, "Mr. Stark left for Washington last night, and took with him Stark's papers and check."

A. I do not recollect whether he brought them or not; it is probably so, but I do not know whether he did or not; but the letter states what is probably so.

Q. And this letter you received from the defendants?

A. I presume it came from them.

Q. Look at this letter (Exhibit No. 77 shown witness) and state whether or not it was received from the defendants.

A. It was; I recollect that very well.

Q. "Messrs. D. P. Holloway & Company,

"514 Ninth street, Washington, D. C.

"GENTLEMEN: Enclosed please find our check for $80, for fees in Stark's reissue case. We also return herewith all the papers, signed as requested, together with the original patents and the assignment, to be recorded."

Do you remember who brought you this letter, and the papers accompanying it, named therein?

A. I do not.

Q. Did you receive any of the papers connected with the assignment of the Stark patent and the reissue from any one excepting Mr. Stevens?

A. Never had any other communication with any other person but Mr. Stevens in that business.

Q. And what papers you received through the hands of any one you received from him?

A. I think, beyond all doubt, they were.

Q. Do you remember Mr. Stevens having the models showing improvements which he had gotten up on folding beds at your office, in Washington?

A. I do.

Q. Do you remember about what time that was?

A. No; I cannot fix dates, only by correspondence.

Q. Was it about the time of the negotiation connected with the Stark business?

A. The spring of 1878.

Q. Do you remember getting Mr. Mason to stop at the defendants' place to examine Mr. Stevens' models?

(Objected to by Mr. Otterson.)

Q. On Mr. Mason's return from New York to Washington, do you remember getting him to stop over here, in Philadelphia, to go to defendants' place of business and examine Mr. Stevens' models?

A. That was my object in telegraphing him to stop, to see the models of Mr. Stevens.

Q. And, after the examination of them by Mr. Mason at the defendants' place of business, they were examined by you in Washington?

A. They were then—afterward; yes, sir.

Cross-examined by Mr. OTTERSON:

Q. Are you and Mr. Mason still in business together?

A. He has left my office; but he is my partner until the court decides him otherwise.

Q. Do you mean to say there is litigation pending between you in reference to your partnership?

A. I mean to say that I have an injunction against him to restrain him from collecting any money or disposing of any assets of the firm.

Q. Then I infer that—am I correct—there is no happy state of feeling between Col. Mason and yourself?

A. No special unpleasant feeling.

Q. No specially pleasant feeling either, I suppose?

A. My relations with Col. Mason have been very pleasant, personally.

Q. And remain so to this time?

383 A. Well, I have not a very high appreciation of the gentleman's honesty.

Q. Notwithstanding that, you have the kindest feeling toward him?

A. Well, personally, I have no unkind feelings. Perhaps my temperament is different from some other men. I can forgive and look over many things.

Q. Even dishonesty?

A. Well, when a man's habits are such as to make an excuse for him, perhaps even my charity might go to that.

Q. What do you mean by that?

A. I mean by that that a man's inordinate extravagance may lead him to do a thing that he would not do under other circumstances. There are many things in which a man—without making a personal allusion to Colonel Mason—when he has a peculiar temperament, indulges in to great extravagance; and there is, perhaps, some excuse, because it is the nature of the man to do so. I might excuse him in the same way that, if a man drinks whiskey, I would allow some apology to be made for a man doing something, when I knew that he had been drinking whiskey.

Q. Do not forget that you are a witness, and that whatever you say goes upon record.

A. Those are my opinions, and I shall proclaim them before the world, or anywhere else.

Mr. BOWMAN (to Mr. Otterson): You should remember that he has not volunteered his opinions, but has answered your questions?

Mr. OTTERSON: The witness does not require your assistance now.

The WITNESS: I have nothing to conceal.

By Mr. OTTERSON:

Q. How long is it since you separated from Colonel Mason under these happy, or unhappy, circumstances?

A. I think Colonel Mason left our office in October last.

Q. What do you mean by "our office?"

A. Because he was my partner then, and is my partnet now. There has been no dissolution of partnership between him and me, and will not be until the court adjudicates the matter and dissolves

the partnership, because we have an application pending in court to dissolve partnership.

Q. The letters which have been produced here by you were letters which were received indifferently by yourself or your firm, or Mr. Mason, as the solicitors of the defendants, when you were there?

A. Nine-tenths of them were received by myself.

Q. I observe that they are addressed principally to Colonel Mason.

A. I did not open them if they were so addressed on the outside. I do not know.

Q. I speak of the face of the letters as they appear here?

A. If the majority were addressed to Colonel Mason on the outside I did not open them; but the mail came to me, and I opened the letters addressed to the firm.

Q. But the letters which you have produced here are letters which have been received by Col. Mason individually while you were together, and received by the firm while you were together and acting as the solicitor for these defendants.

A. Yes, sir.

Q. They were left in the office when Colonel Mason withdrew?

A. Except those which he took away.

Q. Did he take away any on this business?

A. He did.

Q. Do you know what?

A. No; I do not know what, but he came to me and told me that he had.

Q. I object to that; I am not asking you what he told you.

384 A. Well, I saw him take some papers out of the file.

Q. You do not know what they referred to?

A. Only what he said.

Q. I do not want what he said. We will call him if we want to know what he said.

A. That is all I know.

Q. What was the paper which had been placed in your drawer for the purpose of being recorded, which you speak of as an assignment of the Stark patent, and how did it get there?

A. It was an assignment of the Stark patent to Hale, Kilburn & Co., to the best of my recollection, placed in my drawer, to be recorded in the Patent Office. Whether Col. Mason handed it to me, or whether Mr. Stevens did, I cannot say.

Q. Do you know who prepared it?

A. I do not know; I cannot recollect.

Q. Was it not the paper which had been prepared in the office by Col. Mason and sent here for execution?

A. I cannot say whether it was or not.

Q. It was not the paper which was afterwards destroyed?

A. I understood it was. I understood the first assignment was destroyed.

Q. I want to know whether this was the paper which was destroyed or not.

A. I cannot say how it was destroyed. I simply know it was destroyed.

Q. And that was the paper which was put in your drawer?

A. Yes, sir.

Q. Who put it there; do you know?

A. I put it there myself, to answer your direct question; but whether it was handed me by Col. Mason or by Mr. Stevens I cannot say.

Q. Do you mean to say that that paper that was destroyed was an assignment, or was a contract for the Stark patent?

A. I understood it was an assignment.

Q. Did you examine it at all?

A. My impression is that I did.

Q. Did you speak of it with reference to the examination you made of it, as an assignment?

A. I believe it was.

Q. That is not what I asked you; please answer my question.

A. My reason for that is——

Q. I do not want your reason; please answer my question.

A. Well, ask your question again.

Q. Was the paper you speak of the assignment of the Stark patent or a contract for an assignment?

A. I believe it was an assignment.

Q. Why do you believe it was an assignment?

A. Because I was assured it was one.

Q. Then your belief is not based upon a personal examination of it?

A. I would not say that I read the assignment through and through.

Q. Then, when you say it was an assignment, all you know is that you were told it was an assignment?

A. No, sir; not that. Because we were about to apply for a reissue of the Stark patent, and I prepared the petition and the oath. The petition was handed to me to be recorded, in accordance with this application for a reissue, and it is scarcely probable that I would offer the contract for an assignment, and, at the same time, make an application for a reissue. Is that intelligent?

Q. No, sir; not at all.

A. Well, it may not be to you.

Q. It may not be to me?

A. I only mean this, that a man who is not acquainted with the technicalities of the office——

Q. I understand what you mean. I only say it is not intelligible.

A. It may not be, but that is a fact.

385 Q. Where was the assignment, which was ultimately recorded, prepared?

A. I cannot say.

Q. You know there was a subsequent assignment prepared?

A. I think there was.

Q. And sent to Philadelphia for execution?

A. Either that——

Q. Or was executed in your office in Washington?
A. I cannot say which.
Q. And was placed on record?
A. I will not even say that.
Q. Or was left in Mr. Mason's hands, in escrow?
A. I do not know that.
Q. Were you brought into familiar contact with the parties themselves during this business, or was Mr. Mason the party who treated with them?
A. With Hale, Kilburn & Co., he attended to all their correspondence, and prepared their cases.
Q. In their personal business were you brought in contact with them?
A. Very seldom; I simply recollect Mr. Kilburn.
Q. And you remember Mr. Stevens being there but once in his company?
A. But once in his company; one day. But he was there frequently upon his own private business. He was there two or three times on this other business. I intended to say, in the first place, that he was there several times in connection with this Hale & Kilburn matter. The reissue of the Lee patent and the Stark patent brought him there several times.
Q. You remember that the Lee patent was for a chair, do you not?
A. I think it was.
Q. That was a matter purely between Mr. Kilburn and Mr. Stevens?
A. I do not know anything about their relations. I suppose it was an arrangement with the Hale & Kilburn company.
Q. But that was a matter about a chair, and not about a bed?
A. Yes, sir.

Re-examined by Mr. BOWMAN:

Q. I omitted to ask you if you remember visiting the Patent Department with Mr. Everitt and examining the papers for the reissue of the Stark patent.
A. I do.
Q. Will you state whether or not there is apparent upon the face of those papers a change in the handwriting?

(Objected to by Mr. Otterson.)

A. The petition and oath is in my handwriting, interlined by Col. Mason. The specification is in Mr. Mason's handwriting.
Q. In whose handwriting was the first petition—I mean the first pages?
A. Mine.
Q. And the latter pages?
A. Colonel Mason's.
Q. Do you know in whose handwriting the papers were originally?
A. Do you mean the specification?
Q. Yes, sir.
A. Colonel Mason's.

Q. And the other?
A. The same.
Q. In Colonel Mason's?
A. Yes, sir.
Q. After they had been executed and witnessed, was the fore part taken off and changed?

386 (Objected to by Mr. Otterson.)

A. I will say that the uniform practice is to put the petition and the power of attorney on the first page in front, and the oath afterward. In this case the oath and petition are on the same piece of paper, and put entirely in front—a thing that I never saw done before.
Q. Do you know who did that?
A. No, sir.
Q. Look at this book (a letter-press copy book shown witness), and tell me what it is?
A. It is a letter book of the firm of D. P. Holloway & Co.
Q. I direct your attention to the letter dated Washington, D. C., March 4, 1878. Who wrote that letter?

(Objected to by Mr. Otterson.)

A. Colonel Mason wrote it, and his name is signed to it.
Q. What was done with the original letter?
A. I can only say that it was sent to Hale & Kilburn.

Mr. BOWMAN: I now call upon Mr. Otterson to produce the original letter, of which the letter-press before me is a copy.

Mr. OTTERSON: I have not the slightest idea of what letter is before the counsel, and I have had no notice of any call up to this moment to produce the original.

Mr. BOWMAN: Then I will read this letter:

"Hale & Kilburn Manufacturing Company.

"GENTLEMEN: Your case has been suspended as directed. I think the best course would be to return the assignment to Stark, and have him execute the application for reissue as the sole owner, and then make an assignment with subsequent date. This need not be recorded immediately, and, in the meantime, he having attained his reissue, should call on you for settlement, and you call on Everitt to make his title good, or release you from royalty, or make a fair reduction of same.

"Yours truly, R. MASON."

By Mr. BOWMAN:

Q. I direct your attention to another letter in the same book, dated February 28, 1878. In whose handwriting is that?
A. It is Colonel Mason's.
Q. What was done with the original letter?
A. I presume it was sent to Hale, Kilburn & Co.

Mr. BOWMAN: I call on Mr. Otterson to produce the original letter, of which the letter-press before me is a copy.

Mr. OTTERSON: This is all irregular, because I take it that if Mr. Bowman had intended to put in this matter to-day, he should have put it in before handing the witness over to me for cross-examination. It is no rebuttal at all and is no re-examination, but is entirely new matter.

Mr. BOWMAN: My answer to that is that these letters were just brought to my attention during the course of the examination, and I regard them as directly in rebuttal of all the material evidence of the defendants. I will read this letter:

"WASHINGTON, D. C., *February* 28, 1878.

"Hale & Kilburn Manufacturing Company.

"GENTLEMEN: The reissue of the Stark patent does not affect the validity of the claims of the Everitt patent, while it dominates the structure described in the latter patent, which is for features not described in Stark's; while, as it also includes things covered by Stark, it is an infringement. This is a very common conditon of affairs, when improvements are made on an older patented machine. The owners of the original cannot use the improvements without license, and, on the other hand, the owners of the improve-
387 ments have right to build according to the original designs.

It is very clear that you cannot continue to use the Everitt improvements without liability under your contract. When it is found, in any suit, that you are infringing any prior patent, the contract gives you the option to recovery to Everitt, and through that be released from liability under the contract; but, if you continue to use his devices as patented, you would be liable as other infringers are. While, therefore, you use his devices, you must pay. You may, however, discontinue the use, and I do not see that the contract gives Everitt any remedy. You seem, however, to have made yourself liable if you use your own inventions covered by patents taken out by one of the parties. If you can dispense with both the Kilburn counter weight, and whatever else may be covered by your patents, and also the two features covered by Everitt, you are free to do so, and without license.

"Yours, truly, R. MASON."

"P. S. It appears to me that the model introduced to my notice by Mr. Stevens will avoid all question of infringement of Everitt. It does not include a movable bed bottom, which is the essential element of the first claim, and it does not have the side bracket extended above the side rails to form a receptacle for the pillows, on which the second claim depends. As I understand it also renders the peculiar arrangement of the counter-weights patented by your Mr. Kilburn necessary, and enables you to use the common counter-weight, long before employed, and now public property.

"Yours, R. M."

Adjourned until Wednesday next, March 3, 1880, at 3 p. m.

PHILADELPHIA, *March 8th*, 1880.

Parties met at the office of the master.

Present: The master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

E. E. EVERETT recalled and examined by Mr. BOWMAN:

Q. Did you hear that Mr. Roberts and Mr. Hale, one of the defendants, testified as to the rate of discount allowed special agents?

A. I did.

Q. Please state whether or not the rate of discount allowed to their special agents represents the wholesale prices.

A. It did not.

Q. State wherein they differ?

A. Those rates allowed special agents were such as those agents could sell to the trade—the furniture trade—and the price that they obtained from the trade was what they call their wholesale price, not the special rates to their agents and their own stores.

Q. In their settlements with you what basis did the defendants take—the rates allowed to their special agents?

A. They did.

Q. Those rates were greater than what they allowed to the general or wholesale trade?

A. Yes, sir.

Q. Can you tell what difference there was in the rates?

A. They varied. The rates between the wholesale trade price and the price they sold to special agents varied from fifteen to twenty or twenty-five per cent.; I guess as much as that.

Q. In what way?

A. The discount to the special agents in their own stores was more than they allowed to the trade. As a rule, during the last three years, they allowed to the special agents as high as thirty-three and a third off, and to the trade they allowed ten off in this city. I discovered two instances in Ohio where ten off was allowed, one at Cleveland and the other in Cincinnati. Then to the trade in other places I noticed we found some twenty off to the trade; their books show it. At the same time they were allowing special
388 agents thirty-three and a third, and in one instance more than that—that is, one agent.

Q. You also heard what the defendants testified to with reference to the royalty received from the Pennsylvania Railroad Company; they stated, I believe, that they received no royalty from that company, but sold them your patented bed; have you examined the books of the defendants on that subject?

A. I have; that is not so; they did receive royalty.

Q. What do the books show on that point?

(Objected to by Mr. Otterson, because the books are in evidence.)

A. The books show that they did receive a royalty; if you will allow me to look at a memorandum I will refer to the entry, the page, and the date——

(Objected to by Mr. Otterson.)

(Referring to memorandum.) Sales book B, page 234, December 14, 1875, springs and fittings for one Champion folding bed, including royalty, car No. 60, $35; those springs and fittings were $7.50, which they charged me for, and the balance was for royalty; in the same entry, royalty on bed now in use in car No. 180, $25; that was charged alone for the royalty. Sales book S, page 191, January 13, 1875, entry of one set of castings and springs for folding bedstead, including royalty, to use same in special car No. 50, $50; those springs and fitings for those bedsteads were not spring bottoms; they were springs to use in the place of weights to counterbalance the bed; it is merely the fittings, so that they could build the bedsteads themselves, and put it in the car; they charged me $7.50 for the same things—I thought it was a very good price for them—and the balance was for royalty for the use of them.

Q. In the settlements made with you by the defendants for royalty what would they take as their basis in allowing you royalty upon goods sent to their branch store?

A. They would take the prices that the goods were sold for here, as a rule, in this city, and not what the goods were sold for in New York.

Q. Would they enter in their books certain prices for the goods sent to their branch stores?

(Objected to by Mr. Otterson.)

A. Yes, sir.

Q. State whether or not they would take those prices as their basis of settlement with you for royalty?

A. As a rule, I believe they did; there may be instances where they did not, but they did not settle with me for what the goods sold for in New York.

Q. Have you examined the return sheets which the defendants produce here and which they say represent the prices received for the goods by their branch stores in New York?

A. I did, very carefully.

Q. What do those return sheets show as to the prices received for the goods compared with what they are charged at in the defendants' books, and upon which, at least in their books, they settled with you?

(Objected to by Mr. Otterson.)

A. More than two-thirds of the goods sold in the New York store were sold for more money than they were entered in their sales books here for.

Q. How about the other stores?

A. I did not pay the attention to the other stores that I did to the New York store; I went over that very carefully; I found, as a rule, the goods were sold there at higher rates than they were sold here for, or that they were entered into their sales books for.

Q. Did you ever get any royalty on that difference in price
389 between what the goods were charged in their books here for and what they were sold for in New York?

A. Never. I forgot to state about those cars. I never received any royalty for the sales of those fittings to the Pennsylvania Railroad Company; neither did I receive half of the license fee that they had sold the rights for—the rights to use in those special cars—which I was entitled to under my contract.

Q. You also heard what Mr. Hale testified to about the carpet in the store, that he had bought this carpet?

A. I was not with him when he bought it; neither did I go to look at it with him. I am positive about that.

Q. You heard what Mr. Roberts testified to about his offering to show you the books of the defendants after they had refused to let you see them; state whether he was correct about that or not.

A. He never did to my knowledge—never.

Q. Never what?

A. Offered to let me see the *goods;* neither did he tell me that Mr. Kilburn offered to let me see them. I never asked for the books after I was refused.

Q. I believe you want to make a correction as to your testimony in relation to the Tobey Furniture Company?

A. I think I must be mistaken with regard to saying that there was only two charges at rates larger than thirty-three and a third off. The books being away, I got it confused in my head, and I must be wrong about it. However, the books will show for themselves.

Q. (Advertisement of the Hale & Kilburn Manufacturing Company, on page 31 of "The American Cabinet-maker" of March 6 1880, shown witness.) Where did you get that publication?

A. I received this at a furnishing store in Market street.

Q. Whose advertisement is that on page 31?

A. The Hale & Kilburn Manufacturing Company's advertisement.

(Paper offered in evidence by Mr. Bowman, and marked "No. 94, March 8th, E. H. D.")

Q. Have you heard what was said about your contract with these defendants and their statement as to their considering the matter a swindle? State how that was prepared, and who procured it, and all about it.

A. They had it prepared themselves; they employed their own attorney to do it, and would not allow me to have anything to do with it. They would not trust to my lawyer to do it, but they employed Mr. Howson to do it.

Q. Did they examine, through their counsel, your patent record?

A. Yes, sir; they had it there before them.

Q. And their counsel prepared the papers?

A. He did.

Cross-examined by Mr. OTTERSON:

Q. What was the house in Cleveland to whom a sale was made of ten per cent. off?

A. The Herndon Furniture Company.

Q. Can you give the date of the sale?

A. I think I can. (Referring to a memorandum.) September 26th, 1876.

Q. What was sold?

A. I have not got a memorandum of what was sold.

Q. Have you the amount?

A. No, sir; I have not got the amount neither, but I recollect very distinctly Mr. Roberts being examined on that very bedstead.

Q. Who was the sale to in Cincinnati?

A. Mitchell and Rommelsburg.

Q. What was the date of that sale?

A. November 29, 1876.

Q. Do you know what that sale was?

390 A. I cannot tell you what that sale was, but the amount of the bill was $326.50.

Q. Do you know whether or not that ten per cent. off was the regular rate to the trade at that time?

A. I know it was here, and that I sold goods at that rate off myself, as a special agent.

Q. Do not you know that that was the regular rate of discount?

A. Ten per cent. off?

Q. Yes, sir.

A. It was to the trade, as far as I knew.

Q. But I understood you as alluding to these as exceptional cases of injustice, because ten per cent. off was allowed?

A. There was, I stated, twenty per cent. off allowed some outside dealers and their special agents.

Q. At the time of these sales?

A. I will not be positive about that.

Q. Do you mean that these sales in Cleveland and Cincinnati to which you have referred were exceptional because of the low rate of discount that was allowed off?

A. I know that they allowed it to the trade in this city.

Q. Why do you select these two sales in Cleveland and Cincinnati for purposes of remark in your testimony?

A. Because I saw them in the book.

Q. What is there remarkable about them; how do they differ from other sales to other houses at the same time?

A. They say in their testimony that they sold to the trade outside for a higher rate of discount than that, and I want to show that they did not.

Q. You do not know what was sold—a single item, or a hundred items?

A. It does not matter about that.

Q. Answer my question—you do not know whether there was a single article sold or a hundred, in either of the cases?

A. I do not know positively; no, sir.

Q. Tell us what became of the carpet after the closing of the Centennial Exhibition; did it not go to you?

A. I traded my platform——

Q. Did not you get that carpet?

A. I did; I traded my platform for it.

Q. I thought the platform was put up by the Kilburn Company?

A. I agreed to pay for it, and did pay for it. Harry S. Hale, after the close of the Centennial Exhibition, at the opening of the Permanent Exhibition, wanted to use the platform in the Permanent Exhibition, and we made a trade; they took my platform and I took their carpet.

Q. What became of the carpet that was charged to you—the whole of the carpet on the platform was not yours; I want to know whether the share of the carpet which was charged to you was not taken by you after the Centennial closed, and whether you did not make your own use of it?

A. I did not positively; they took possession of it and took it away, and put it in their store.

Q. What became of it then?

A. It was there for a number of months.

Q. What became of it ultimately?

A. I traded the platform that I paid twenty-five dollars for for the whole carpet that was on the stand.

Q. How many months was this after the Centennial Exhibition closed?

A. Two months, I suppose.

Mr. BOWMAN: There was a call made on February 16, 1880, upon the defendants to produce their answer of April 10, 1878, to the letter of R. Mason to them. I also called on them at the same time to produce the answer of R. Mason to their letter of April 11, 1878, the answer being dated April 11, 1878; the copies were not offered in evidence, and I call for the original. At that time I offered another letter in evidence—not these; what I offered in evidence was a letter from the defendants to Mr. Everitt, dated October 9, 1877, with the envelope in which it was enclosed. We call
391 for the production of the original letter, for the purpose of offering them in evidence; and, with that exception, we close.

Mr. OTTERSON: We close with the exception of a deposition, which we may hereafter offer in evidence.

C. P., 4. Sept., '78. In Equity.

392 EVERETT } 564.
v.
HALE. }

Please enter rule on plaintiff and defendants in above case for order to pay examiner and master's fee, ret'ble next Saturday.

To Chas. White, Esq., Washington:

Granted.

C. C. P., 4, Sept. 28, '81.

T. R. E.

393 In the Court of Common Please of Philadelphia County, No. IV, of September Term, 1878. Sitting in Equity.

ELISHA E. EVERETT
vs.
HENRY S. HALE *et al.* } No. 564.

And now, Ap'l 22d, 1882, this cause came on to be heard at this term upon bill, answer, proofs, and the reports of the master, with the exceptions filed thereto on behalf of the defendants. And the court having heard the arguments of counsel thereon, upon consideration thereof it is ordered, adjudged, and decreed as follows:

First. That all the said exceptions be dismissed, and that the said report of the master be confirmed.

Second. Upon the account as stated, of the defendants' sale under the plaintiff's patent, and the contract of sixteen April, 1874, the defendants are indebted to the plaintiff in the sum of six thousand five hundred and fifty-four dollars and fifty-eight cents ($6,554.58), with interest from tenth December, 1878, the date of the entry of the interlocutory decree in this cause; and the defendants are hereby directed to forthwith pay to the plaintiff the said sum of six
394 thousand five hundred and fifty-four dollars and fifty-eight cents, with interest as aforesaid.

Third. The defendants are hereby directed forthwith to assign and deliver to the plaintiff the letters patent for an improvement in folding bedsteads, numbered 148,940, and dated twenty-fourth March, 1874.

Fourth. The defendants are hereby directed to forthwith assign and deliver to the plaintiff the following letters patent, to wit: Number 159,908, granted sixteenth February, 1875, to H. W. Curtis; number 181,450, granted twenty-second August, 1876, to C. Kilburn; number 182,465, granted nineteenth September, 1876, to S. D. Newcomb, and number 210,777, granted tenth December, 1878, to Henry S. Hale.

Fifth. The defendants are directed hereby forthwith to assign and deliver to the plaintiff the reissued patent, numbered 8161, and granted ninth April, 1878, to Andrew Stark.

Sixth. The costs of the cause are directed to be paid by the defendants.

Ap'l 22, '82. M. R. T.

395 *Appeal.*

C. P., 4, of September Term, 1878. In Equity.

EVERETT
vs.
HALE, KILBURN, *et al.* } No. 564.

And now, April 25th, A. D. 1882, the defendants in the above case do hereby appeal from the decree entered by the court in the above-entitled cause.

GEORGE W. BIDDLE,
Per GEO. B.,
For Defendants.

CITY & CO. OF PHILADELPHIA, *ss:*

Henry S. Hale, being duly sworn, says that the above appeal is not taken for purposes of delay.

HENRY S. HALE.

Duly sworn & subscribed this 25th day of April, 1882.
JAS. W. FLETCHER, *Dep. Proth'y.*

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

THOMAS R. ELCOCK. [SEAL.]
MICHAEL ARNOLD. [SEAL.]

396 *Fieri Facias.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

[SEAL.] We command you that of the goods and chattels, lands, and tenements of Henry S. Hale, Artemus Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company, and The Hale-Kilburn Manufacturing Company, in your bailiwick, you cause to be levied six thousand five hundred and fifty-four dollars and fifty-eight cents, which to — Elisha E. Everitt, lately in our court of common pleas, No. 4, for the county of Philadelphia, were adjudged to him by the judges of our said court, as also one hundred and sixty-three dollars and seventy-eight cents, for his costs and charges by him about his suit in that behalf expended, whereof the said defendants are convict, as appears of record, etc.

And have you that money before our judges at Philadelphia, at our said court, there to be held the first Monday of March next, to render to the said plaintiff for the judgment and costs aforesaid. And have you then and there this writ.

Witness the Honorable M. Russell Thayer, president of our said court at Philadelphia, the fifth day of Feb'y, in the year of our Lord one thousand eight hundred add eighty-three.

JAS. B. WEBB, *Prothonotary.*

396½ [Endorsed:] 504. Sept. term, 1878. C. P. No. 4. Elisha E. Everitt *vs.* Henry S. Hale, Artemus Kilburn, J. Warren Hale, Cheney Kilburn, Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Co. & The Hale-Kilburn Manufacturing Company. *Fieri facias.* Real debt, $6.554.58; int. from Dec. 10, '78, —; att'y, &c., bill, $6.50; proth'y, $8.87; crier & Sat., 25; *fi. fa.*, 50; service, 25; S. C. costs, $11.00; pl'ff bill, $137.16; Wendell P. Bowman. E. C. Mitchell.

C. P., No. 4. September Term, 1878.

397 ELISHA E. EVERETT
vs.
HENRY S. HALE *et al.* AND THE HALE & KILBURG M'F'G CO. } No. 560.

J. Warren Hale, being duly sworn according to law, doth depose and say:

1. I am one of the defendants in the above case. The defendants in the above-entitled case appealed from a decree of this court on the twenty-fifth day of April, 1882. The said decree of this court was affirmed by the supreme court of Pennsylvania on the 29th day of January, 1883, and judgment rendered and recorded on said day.

2. On the 29th day of January, 1883, a remittitur from the supreme court was issued and the record returned to this court, and on the 5th day of February, 1880, a writ of *fi. fa.* issued from this court and the property of said defendants levied upon.

3. A writ of error was taken from the Supreme Court of the United States to the supreme court of Pennsylvania to reverse said last-mentioned judgment, which writ of error was allowed and a bond in the sum of fifteen thousand dollars, duly approved
398 by Chief Justice Mercur, of the supreme court of Pennsylvania, and said writ of error and bond were duly filed in the supreme court on the 7th day of February, 1883.

That on the 7th day of February, 1883, a citation was awarded by the supreme court.

4. I am informed and believe that on the 7th day of February the prothonotary of said supreme court certified the above facts, which certificate was duly filed with the prothonotary of this court.

J. WARREN HALE.

Duly sworn and subscribed this eighth day of February, A. D. 1883, before me, a notary public in and for the county of Philadelphia.

[SEAL.] HENRY R. HATFIELD,
Notary Public.

399 C. P., No. 4. September Term, 1878.

ELISHA E. EVERITT
vs.
HEN'Y S. HALE *et al.* and the HALE & KILBURN M'F'G CO. } No. 564.

And now, Thursday, February 8th, 1883, on motion of George Biddle, Esq'r, for defendants, and on hearing the affidavit of J. Warren Hale, this day filed, the court grant to the defendants the rule to show cause why the writ of *fi. fa.* heretofore issued in this cause should not be stayed and quashed, returnable to Saturday morning, February 10th, 1883, at 10 a. m.

Feb. 8, '82. M. R. T.

400 In the Supreme Court for the Eastern District of Pennsylvania, of July Term, 1882. No. 90.

In the Matter of the Appeal of HENRY S. HALE *et al.* from the decree of the court of common pleas, No. 4, of Philadelphia county, in the case wherein ELISHA E. EVERITT is plaintiff, and said appellants are defendants.

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania for the eastern district, do hereby certify that the decree of the court of common pleas, No. 4, of Philadelphia county, in the above case was affirmed by the supreme court on the 29th day of January, A. D. 1883.

That a writ of error to the Supreme court of the United States was taken by said Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company, and the Hale and Kilburn Manufacturing Company, which said writ of error was approved and allowed by the chief justice of the
401 supreme court and remains on file in this office, and that a bond in the sum of $15,000.00, with sureties approved by the chief justice of said court, was given and executed by the defendants upon their said appeal to the Supreme Court of the United States, and was filed and remains of record in the office of the said prothonotary.

That said bond was filed and the writ of error and citation issued on February 7th, A. D. 1883.

Witness my hand and the seal of the supreme court of Pennsylvania, this 7th day of February, A. D. 1883.

[SEAL.] CHAS. S. GREENE,
Prothonotary Supreme Court, E. D.

402 *Copy of Docket Entries.*

90. July Term, 1882.

Geo. W. Biddle. Appeal of Henry S. Hale, Artemus Kilburn, J. Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company and the Hale Manufacturing Co., from the decree made in the case in which Elisha E. Everitt was plaintiff and the above-named appellants defendants.

Cert. to common pleas No. 4 of Philadelphia county. R't'ble first Monday in January, 1883. Ex't- May 20, 1882.

Jan. 3, 1882.—Record returned and filed.

Dec. 26, 1882.—Assignment of errors filed.

Jan. 16, 1883.—Argued.

Jan 29, 1883.—Decree affirmed and appeal dismissed at the costs of the appellant. *Per curiam.*

Jan. 29, 1883.—Remittitur ex't- and with record sent to E. C. Mitchell, Esq.

Jan. 30, 1883.—Petition for reargument filed.

Feb'y 5, 1883.—Reargument refused *per curiam.*

Feb'y 6, 1883.—Petition presented for writ of error to Supreme Court of the United States. Petition granted. *Eo die* citation awarded and writ of error allowed.

February 7, 1883.—Bond in the sum of fifteen thousand ($15,000) dollars presented. Bail justified and bond approved and filed. *Eo die* writ of error and citation filed. *Eo die* citation ex't-.

Feb'y 8, 1883.—Citation returned and, with sworn copy of service, filed. *Eo die* copy of petition filed. *Eo die* copy of writ of error filed.

Feb'y 20, 1883.—Exception to bond filed.

March 10, 1883.—Exception to bond filed. *Eo die* ordered that the real estate security be entered in the sum of $50,000. Bail to justify before the prothonotary on Saturday next, at 9 a. m.

March 17, 1883.—The court direct the words real estate be stricken from above order. *Eo die* exceptions to bail withdrawn.

March 17, 1883.—The court, on motion of Geo. W. Biddle, Esq., reduced the amount of bail to ($30,000), and ordered that the bond for $30,000 be substituted for bond previously filed.

403 Supreme Court of Pennsylvania, Eastern District. Term 1882. No. 90.

Appeal of Henry S. Hale, Artemus Kilburn, J. Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company, and the Hale & Kilburn Manufacturing Company, from the decree of the court of common pleas No. 4, of Philadelphia county, of September term, 1878, No. 564, in a case in which Elisha E. Everitt was plaintiff and the above-named appellants defendants.

Issue appeal and certiorari.

GEORGE W. BIDDLE,
For Appellants.

J. E. A.

404 *Appeal of The Hale & Kilburn Manufacturing Company from the Court of Common Pleas No. Four of Philadelphia County of September* [*Term*], 1878. *No.* — .

IX. Assignments of error.

1. The court erred in dismissing the defendants' exceptions to the master's report.

2. The court erred in confirming the master's report.

3. The court erred in not confirming and sustaining the defendants' exceptions to the master's report.

4. The court erred in not dismissing the master's report.

5. The court erred in decreeing that the defendants were indebted to the plaintiff in the sum of sixty thousand five hundred and fifty-four dollars, with interest from December, 1878, and directing them to pay the same to the plaintiff forthwith.

6. The court erred in decreeing and directing that defendants forthwith assign and deliver to the plaintiff the letters patent for an

improvement in folding bedsteads, number 148,940, deed dated 24th March, 1874.

7. The court erred in directing and decreeing that defendants forthwith assign and deliver to plaintiff the following letters patent, to wit: Number 159,908, granted 16th of February, 1875, to H. W. Curtis; number 181,450, granted 22d August, 1876, to C. Kilburn; number 182,465, granted 19th September, 1876, to S. D. Newcomb, and number 210,777, granted 10th December, 1878, to Henry S. Hale.

8. The court erred in directing and decreeing that defendants forthwith deliver to the plaintiff the reissued patent number 8,161, and granted 9th April, 1878, to Andrew Stark.

9. The court erred in directing and decreeing that the costs of the cause be paid by defendants.

10. The court erred in not decreeing that the costs of the cause be paid by plaintiff.

405 *Copy of Opinion.*

Hale & Kilburn Manufacturing Company's Appeal.

Appeal from Decree of Common Pleas No. 4 of the County of Philadelphia. In Equity.

Per curiam:

Notwithstanding the full and able argument of counsel for the appellants, we are unable to discover any error in this decree. The evidences of fraud on the part of the Company are so manifest as to fully vindicate the conclusion of the court and to justify the decree.

Decree affirmed and appeal dismissed at the costs of the appellants.

Filed January 29th, 1883.

406 EASTERN DISTRICT OF PENNSYLVANIA, *sct:*

The Commonwealth of Pennsylvania to the justices of the common pleas court No. 4 for the county of Philadelphia, Greeting:

Whereas, by virtue of our writ of certiorari from our supreme court of Pennsylvania for the eastern district, returnable in the same court on the first Monday of January, in the year of our Lord one thousand eight hundred and eighty-three, a record was brought into the same court upon appeal by Henry S. Hale *et al.* from your decree made in the case wherein Elisha E. Everett was plaintiff and said appellants are defendants, and it was so proceeded in our said supreme court that the following decree was made, to wit, decree affirmed and appeal dismissed at the costs of the appellant, and the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the act of assembly in such cases made and provided) ordered by the said supreme court to be remitted to the common pleas court No. 4 for the county of Philadelphia aforesaid, as well for execution or otherwise as to justice shall appertain, wherefore we here remit you the record of

the decree aforesaid and the proceedings thereupon, in order for execution or otherwise as aforesaid.

Witness the Honorable Ulysses Mercur, doctor of laws, chief justice of our said supreme court, at Philadelphia, the 29th day of January, in the year of our Lord one thousand eight hundred and eighty-three.

HAROLD P. NEWLIN,
Pro *Prothonotary.*

406½ [Endorsed:] 564. Sept. T.,'78. C. P.,4. No. 90. July term, 1882. Supreme court. In the matter of the appeal of Henry S. Hale *et al.* Remittitur. Att'y, $3; pro., $7.25; rem., 75c. Filed Jan'y 29, 1883. E. C. Mitchell.

407 *Petition for Reargument.*

In the Supreme Court of Pennsylvania, Eastern District. July Term, 1882. No. 90.

Appeal of the Hale and Kilburn Manufacturing Co.

Henry S. Hale *et al.* respectfully present this their petition for a reargument of the above case, so far as concerns the assignment of the patents, and show as reasons therefor:

I. That the Stark patent was issued on the 22nd day of August, 1865, whereas the patent to Everitt, the plaintiff below, was issued on the 24th day of March, 1874, almost nine years thereafter.

II. That the evidence shows that the appellants purchased the Stark patent by advice of counsel to avoid an action for infringement with their own money, after notice to Everitt that it was desirable to purchase said patent, and Everitt had declined to join them in the purchase thereof.

III. That at most equity will consider the Stark patent as a joint asset, and the plaintiff does not charge more than this in his bill, as appears from the following statement in paragraph 9 of the
408 amended bill: "And your orator charges that the relation which existed between the said defendants and himself were such that they could not, during the existence thereof, acquire title to said Stark's patent adversely to your orator, but they must be presumed to have acted for the joint interest of all interested in the manufacture of the said folding beds under said agreement."

IV. That the appellants deny, and there is no evidence to show, that the patents ordered to be assigned with the Stark and Everitt patents are improvements on Everitt's bedstead and subject to assignment by the terms of the agreement.

V. That counsel for appellants had not sufficient time allowed them for the argument and discussion of these questions before the court.

GEORGE W. BIDDLE,
Of Counsel for Appellants.

409 I, Charles S. Greene, prothonotary of the supreme court in and for the eastern district of Pennsylvania, do hereby cer-

tify that the above and foregoing is a true copy of the record in the above case, so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and the seal of said supreme court this thirtieth day of August, A. D. 1883.

[Seal of the Supreme Court of Pennsylvania, Eastern District. 1776.]

CHAS. S. GREENE,
Prothonotary.

410 *Assignment of Errors.*

Supreme Court of the United States. October Term, 1863.

HENRY S. HALE, ARTEMAS KILBURN, J. WARREN HALE, CHENEY Kilburn, and Warren Hale, who survived H.W. Curtis, with whom they traded as Hale, Kilburn & Co., and The Hale and Kilburn Manufacturing Company, Plaintiffs in Error,

vs.

ELISHA E. EVERITT, Defendant in Error.

1. The court below, the supreme court of Pennsylvania, erred in entertaining the jurisdiction of the cause and in not dismissing said cause, because the validity of a patent was involved, and by article I, sec. 8, and by article III, sec. 2, of the Constitution of the United States, the determination of the validity of a patent is a case arising under the Constitution and laws of the United States, and exclusive jurisdiction to determine the same is vested in the Federal courts.

411 2. The supreme court of Pennsylvania, the court below, erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error, defendants below, "from manufacturing bedsteads and other furniture under said patent (No. 148,940), and from selling any bedstead, made under said patent and improvements manufactured after the date of said decree, December 8th, 1878."

3. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their said decree, viz., after the 8th day of December, 1878, under letters patent of the United States No. 159,908.

4. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their said decree, viz., after the 8th day of December, 1878, under letters patent of the United States No. 181,450.

5. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their decree, viz., after the 8th day of December,

412 1878, under letters patent of the United States No. 182,465.

6. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bestead manufactured

after the date of their said decree, viz., after the 8th day of December, 1878, under letters patent of the United States No. 210,777.

7. The supreme court of Pennsylvania, the court below, erred in affirming the judgment of the court of common pleas, No. 4, of Philadelphia county, neither of said courts having jurisdiction of the cause, because the validity of a patent was involved; and by article I, sec. 8, and by article III, sec. 2, of the Constitution of the United States, the determination of the validity of such patent was a case arising under the Constitution and laws of the United States, and exclusive jurisdiction to determine the same was vested in the courts of the United States.

8. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the said patent (No. 159,908) or from making or selling bedsteads or other furniture thereunder."

9. The court below erred in affirming the judgment of the
413 court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the said patent (No. 181,450) or from making or selling bedsteads or other furniture thereunder."

10. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the said patent (No. 182,465) or from making or selling bedsteads or other furniture thereunder."

11. The court below error in affirming the judgment of the court of common pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the said patent (No. 210,777) or from making or selling bedsteads or other furniture thereunder."

12. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree ordering the plaintiffs in error to pay to the defendant in error, *inter alia*, $971.98, damages for infringement by the plaintiffs in error, after September 24th, 1878, of the defendant in error's letters patent No. 148,940.

13. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county entering a decree that the plaintiffs in error, the defendants below, should account to the defendant in error for all bedsteads alleged to be covered by de-
414 fendant in error's patent No. 148,940, made and sold by them after September 24, 1878, on or before which day the agreement between the parties was determined.

14. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county, finding as a fact and holding that letters patent of the United States No. 148,840 did not infringe letters patent No. 49568 of the United States, issued on the 22nd day of August, 1865, to Andrew Stark.

15. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county finding, as a fact and holding that the letters patent No. 148,940, issued on the 24th day of March, 1874, to the defendant in error, Everitt, were anticipated by

the letters patent reissued to Andrew Stark on the 9th day of April, 1878, reissue No. 8161.

16. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county, finding as a fact and holding that the reissue of letters patent, reissue No. 8161, on April 9th, 1878, to Andrew Stark, so as to cover letters patent No. 148,940, which had been previously, viz., on the 24th day of March, 1878, issued to the defendant in error, Everitt, was fraudulent, or entitled said defendant in error to a decree for the compulsory assignment from the plaintiffs in error to him, without compensation, of the said reissued letters patent No. 8161.

415 17. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county, because the point in controversy in the cause was whether the Everitt patent, No. 158,940, was void because anticipated by prior patents, and the decree affirmed the validity of said patent by enjoining the defendants from manufacturing and selling bedsteads thereunder; which point was one arising under the Constitution and laws of the United States, and the exclusive jurisdiction to determine the same was vested in the Federal courts.

18. The court below erred in affirming the judgment of the court of common pleas of Philadelphia county, because the judgment of the court denied and was against a right, title, privilege, and immunity claimed by the plaintiffs in error under the Constitution of the United States, article I, sec. 8, providing, amongst other things, that Congress shall have power to promote the progress of science and the useful arts by securing for a limited time to authors and inventors the exclusive right to their respective writings and discoveries, and under article III, sec. 2, of said Constitution, providing that the judicial power of the United States shall extend to all cases in law and equity arising under said Constitution, and under the statute laws of the United States referring to the said subject, namely, the right to manufacture articles although covered by letters patent of the United States No. 148,940, on the ground that said letters patent were void and

416 of no effect because anticipated by other and prior patents, and further the right to hold and enjoy letters patent of the United States, reissue No. 8161 purchased by, assigned to, and vested in the plaintiff in error, and to have their aforesaid right so to manufacture and hold and enjoy — determined exclusively by the Federal courts, all of which rights, titles, privileges, and immunities were claimed by the plaintiffs in error; and the said court of common pleas of Philadelphia and supreme court of Pennsylvania have and had no jurisdiction over the subject-matter of this controversy, but the jurisdiction is by the Constitution and statute laws of the United States vested exclusively and cognizable in the Federal courts, and therefore the said proceedings and judgment aforesaid are null and void, and contrary to the Constitution and statute law of the United States in the premises.

19. The court below erred in affirming the judgment of the court of common pleas dismissing the exceptions of the plaintiffs in error to the master's report, and in not reversing the judgment of the

court of common pleas upon the exceptions of the plaintiffs in error to the master's report.

20. The court below erred in affirming the judgment of the court of common pleas, which decreed that plaintiffs in error were indebted to the defendant in error in the sum of six thousand five
417 hundred and fifty-four dollars, with interest from December, 1878, and which directed them to pay the same forthwith.

21. The court below erred in affirming the judgment of the court of common pleas, which decreed and ordered that the plaintiffs in error should forthwith assign and deliver to the defendant in error the letters patent for an improvement in folding bedsteads, numbered 148,940 and dated March 24th, 1874.

22. The court below erred in affirming the judgment of the court of common pleas, which decreed and ordered that the plaintiffs in error should forthwith assign and deliver to the defendant in error the following letters patent, to wit:

Number 159,908, granted February 16, 1875, to H. W. Curtiss.
" 181,450, granted August 22, 1876, to C. Kilburn.
" 182,465, granted September 19, 1876, S. D. Newcomb.
" 210,777, granted December 10, 1878, to Henry S. Hale.

23. The court below erred in affirming the judgment of the court of common pleas, which decreed and ordered that the plaintiffs in error should forthwith assign and deliver to the defendant in error the letters patent reissue No. 8161, reissued April 9th, 1878, to Andrew Stark.

24. The court below erred in affirming the judgment of the court of common pleas, which decreed and directed that the costs of the cause be paid by the plaintiffs in error.

418 25. The court below erred in not reversing the judgment of the court of common pleas, which was erroneous and wrong in every particular.

GEORGE W. BIDDLE,
P. GEORGE BIDDLE,
For Plaintiffs in Error.

419 [Endorsed:] Oct. term, 1883. Supreme Court of U. S. Hale *et al.*, pl'ffs in error, *vs.* Everitt, def't in error. Assignments of error. George W. Biddle, George Biddle, attorneys-at-law, 208 South Fifth street, Philadelphia. Supreme Court U. S. 1884, October term. No. 573. Henry S. Hale *et al.*, pl'ffs in error, *vs.* Elisha E. Everitt. Assignment of errors. [Stamped:] Office Supreme Court U. S. Filed Nov. 29, 1884. James H. McKenney, clerk.

Endorsed on cover: Pennsylvania supreme court. No. 280. Henry S. Hale, Artemas Kilburn, J. Warren Hale, Cheney Kilburn, and Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company, & the Hale & Kilburn Manufacturing Company, plaintiffs in error, *vs.* Elisha E. Everitt. Filed 13th September, 1883.

122-627
(4)

APPEAL OF THE

HALE & KILBURN

MANUFACTURING COMPANY.

MASTER'S REPORT AND TESTIMONY.

Everitt	}	C. P. No. 4.
vs.		S. 1878.
Hale et al.		No. 564.

Meeting, 18 Dec'r. (Wednesday, at 3, p. m.) Pursuant to notice.

Present:—Messrs. Mitchell & Bowman, for plaintiffs; Mr. Otterson for defendant.

Mr. Mitchell calls upon Mr. Otterson to produce books of Hale, Kilburn & Co., and of Hale & Kilburn Manufacturing Co'y. Since 16 April, 1874, and also all patents for improvements in manufacture of folding bedsteads granted to the defendants or any one or more of them since 16 April, 1874.

Mr. Otterson will produce them at the next meeting. Adjourned to Thursday, 26 December, 1878, at 11 o'clock.

Meeting, Thursday, 26 December, 1878, at 11 a. m.

Present: Messrs. Bowman, Otterson and Parties.

Mr. Otterson in reply to the call made at the last meeting, produces.

1. Exhibit A. Letters patent No. 159,908 granted to Hale, Kilburn, Hale, Curtis, Kilburn & Hale for improvement in wardrobe bedsteads dated February 16, 1875,

2. Exhibit B. Letters patent No. 181,450 granted to same parties for same subject dated 22 Aug., 1876.

3. Exhibit C. Letters patent No. 182,465 granted to same for same subject dated Sept. 19, 1876.

Mr. Bowman, for plaintiffs offers said exhibits in evidence.

Mr. Otterson states that he is instructed that the above mentioned are all the patents the defendants have for improvements in wardrobe bedsteads.

Adjourned to Thursday, 2nd January, 1879 at 11, a. m.

Meeting Thursday, 2nd January, 1879, at 11, a. m.

Present—The master and the plaintiff.

Adjourned because of the engagement in court of Messrs. Mitchell & Bowman, to Thursday, 9 January, at 11, or if court engagements of master or council prevent a meeting at that hour: To 3, p. m. of that day.

9 January, 1879, at 3. Adjourned because of sickness of master.

16 January, 1879, at 3, p. m. Present:—Messrs. Bowman, Otterson, the master and parties.

The account as heretofore called for to be filed with the master before the next meeting.

Adjourned to Thursday, 23rd, at 3, p. m.

Everitt
vs.
Hale.

C. C. P. No. 4.

No. 705 Sansom st., Phila., 1-18-79.

C. Stuart Patterson, Esq..

Master,

Dr. Sir:

As requested by yourself and by plaintiff's counsel I submit herewith under their call, the accounts from the defendants books.

These are as follows, viz:

No. 1. Is the account of sales by defendants, of bedsteads *they supposed* they were making under the plaintiffs' patent from September 4, 1874, down to and including October 1878.

No. 2. Is an account of sales included in former accounts, rendered to plaintiff in person, and upon which the defendants have paid royalty, as they claim *by mistake*.

No. 3. Is an account of further sales made by defendants of the articles that claim to be exempt from any charge of royalty, but which have not hitherto been accounted for except in their answer in this case.

No. 4. Is a statement of the payments to plaintiff made by defendant since the signing of the contract.

They ask that this paper be annexed to and made part of the record.

Respectfully

Otterson.

Meeting Thursday, 23 January, 1879 at 3, p. m.

Present:—Messrs. Otterson and Bowman and parties.

Mr. Otterson having produced the accounts which on 18 January, 1879, were filed with the master and sent by him to plaintiff's counsel, the plaintiff's counsel now call on defendants to produce the books showing all their accounts of sales and manufacture of the patented bedstead under the Everitt patent and improvements thereon together with all their order books and other books which they may have in their possession. Showing all their manufactures and sales of said patented articles.

Mr. Otterson replies that the books called for are in constant use, but defendants will produce them if plaintiff will pay the expense of their carriage.

Mr. Bowman replies that plaintiff protesting that he is not bound to pay that expense, will pay it, and calls.

The master directs the defendants to produce at the next meeting the original books of account, showing the sales of bedsteads and furniture manufactured by the defendants under the patent and improvements mentioned in the bill of the 16 April, 1874 and showing all moneys realized from the sale of the same.

Adjourned to meet on Wednesday, 29th January, at 3, p. m.

Monday, January 29th, 1879.

Present:—James Otterson, Esq.

Mr. Owen D. Roberts the defendants accountant is present and ready to make any explanations in reference to the accounts which have already been submitted on call and produces here the books as required by the plaintiff's call and the master's order.

Owing to the absence of Mr. Bowman, plaintiff's counsel the meeting is adjourned until Wednesday, February 5th, 1879 at 3 o'clock, p. m.

Wednesday, February 5th, 1879.

Present:—W. P. Bowman, Esq., on behalf of E. E. Everitt, Esq., E. E. Everitt in person.

James Otterson, Esq., on behalf of Henry S. Hale et al. The Deft's and Henry S. Hale, Esq, in person.

Mr. Owen D. Roberts sworn on behalf of the plaintiff:

I reside at 1240 South 5th st., I am in the employ of the Def'ts.—The Hale, Kilburn Manufacturing Co'y,—I have been in their service a few months over ten years. I was in their service at the time of entering into their agreement with Mr. Everitt in relation to his patent, and have been continuously to the present time. I am their chief book-keeper. I have their books here in reference to their transactions with Mr. Everitt. I have all the books of original entry. I can refer you to the first one. (Book produced marked City Order Book, M.)

Q. Do the books which you have here contain the entries of all orders received by the defendants for the Everitt bedstead and the improvements thereon, no matter from what part of the country received and from foreign parts and do they show the exact quantity of goods manufactured and sold under his patent and the improvements?

A. With the exception of the word manufactured I will say, yes. I mean to say that the books we have here only show the record of orders and sales.

Q. Where are the books which show the quantity manufactured?

A. They are at the office.

Q. Do the books which you have here show the prices received for the articles manufactured and sold under the Everitt patent and the improvements thereon?

A. Not strictly. The sales book which is the book of charge in all cases except to retail parties, show bills subject to a cash discount and the net amount received for the beds will not show except on the cash-book. The cash-books are not here.

Q. Then do I understand, Mr. Roberts, that by a reference to the books which you have here and the cash-books to which you refer you will be able to tell, without any other papers or documents, the exact amount of sales made by the defendants of the Everitt bedstead and improvements thereon; and the prices and amounts received by the defendants?

A. Yes, sir. My answer covers the whole time from the date of the agreement in plaintiffs' bill down to the present.

Mr. Roberts is requested to take up the first book and look over until he comes to the first order, and states that the only way he can do is to examine by order until he comes to the first bedstead. The only index in the book is the name of the purchaser and not of the article purchased.

When I come to an order it simply shows the amount of goods ordered. I have to refer to the sales-book and cash-books to ascertain the amount actually delivered and paid for. In order to ascertain the amount of goods delivered and paid for, I would have to refer to the cash and sales book at or about the date of the order in the order-book. There is sufficient in the cash and sales books to indentify the order in the order-book. There were no sales and cash received nor orders given that were not entered in any of these books to my knowledge. If a bedstead were ordered and paid for at the time of ordering, it should be in the order-book and cash book but not in the sales book.

The following books are left in the custody and control of the master:—

"Foreign order-book, K"	"Sales-book, R.
"City order-book, L."	" " S.
"City order-book, M,"	" " T.
"Foreign order-book, N,"	" " U.
"City order-book, O,"	" " A.
"Foreign order-book, P,"	" " A—1.
"City order-book, Q,"	" " A—2.
"City order-book, R,"	" " C.
"City order-book, S."	" " C—1.
	" " C—2.

"C. O. D. book" (so called) order-books A. B. C, are produced but defendants wanting them for current use are taken away by defendants.

Q. The defendants have branch stores, have they not?

A. Yes, sir,—in different parts of the country. They have none in foreign countries. These books do not show the goods sold by the branch stores in different parts of the country. The cash-books will show the amount of sales made by the branch establishments not in detail but in toto. They will show the amount of money received from the sale of the Everitt bedstead and improvements, in toto but not in detail. By the weekly returns of the branch establishments I can tell every dollar that is received by the sale of the Everitt bedstead and improvements, made by the said branch establishments. These amounts are transferred to the cash-books. I cannot tell without referring to the weekly statement what they are for. That can only be ascertained by referring to the weekly statements. The amounts are merely placed to the credit of the branch stores.

Mr. Bowman calls for the statements of defendants from their different branch establishments throughout the country showing the amount of sales and cash received for the Everitt bedstead and improvements to which Mr. Otterson replies, that they will be produced at the next meeting.

Q. Do those statements show the amount of sales by the agents of the company---that is travelling agents?

A. No sir. The books which are here show that.

Q. Do these books show the amounts of sales by your agents in Chicago, Albany, &c., and other parts of the country?

A. They do not. They simply show the goods we furnish them and the prices, together with the amount of cash paid by them to the defendant. That is these books with the cash-books.

Q. Will these books together with the cash-books show the cash received from every article connected with the patent and the improvements?

A. They will.

Defendant also produces on call the following books:—

"Cash-Book, C." "Cash Book, D." "Cash-Book, E" and "*Petty* Cash, D."

Adjourned to meet Wednesday, February 12th, 1879.

Wednesday, February 19th, 1879.

Present:—Mr. Roberts, Mr. Bowman, Mr. Otterson, Mr. Everitt, Mr. H. S. Hale, Mr. Hoffman, the plaintiff's accountant.

Examination of Mr. Roberts continued by Mr. Bowman.

Sales-book A—2, shown witness, and he is asked in what other book or books the accounts are carried forward to or re-entered in, besides the one above referred to?

A. To the journal and from thence to the ledger,--neither of which books are as yet in the care of the master. I do not think that those books would facilitate the making up of the account in this matter, the same result with them could not be arrived at with less labor and a saving of time. I do not think that it is necessary to have those books in order to verify the account.

(Mr. Otterson states that there is no objection to the plaintiff having them for the purpose of examination.)

I do not think that we have any C. O. D. books after December 27, 1875, I looked for them in answer to your note, but was unable to find any. After that date the bills (C. O. D. ones) were copied in a regular sales-book. I have the statements and accounts sent to the firm from other cities with me. C. S. P. Sales book A—2, page 300, shown witness. And his attention is called to a note made up on one of the entries in 1877, referring to a C. O. D. book then in use by the defendant and he is called upon to explain what that has reference to?

A. The C. O. D. book referred to there as nearly as I can recollect was a private memorandum-book of the shipping clerk in which he kept a list of the C. O. D. bills sent out.

The fact that the C. O. D. bills were copied in the regular sales-book is proven by an entry immediately preceding the entry above referred to. The journal I have referred to is a regular journal in which several classes of accounts are kept. It is not a general merchandise journal. It is only kept for special purposes. It is not a private journal. Entries are not made in it with reference to the sales of the Everitt bedstead, no original entry of any sales of the Everitt bedstead or the improvements are made in it. The journal has nothing to do with the manufacture or sale of Mr. Everitt's patented bedstead. They would not be of any use or benefit whatever in this investigation. No day-book in journal form is kept. I can tell by the cheque mark that the account has been transferred to the journal. Wherever this cheque mark does not appear the account has either been marked void or paid. There is no other mark than this cheque made to show that the account has been transferred. (Mr. Bowman calls for the weekly statements of accounts of sales returned by stores in other cities of the Everitt bedstead and the improvments. The same are produced by the defendants.) They are the original returns made by the stores outside of the city. They cover the time from May 8, 1875, to November 2, 1878. They do not show the sales made by the agents travelling through the country. The accounts of such sales would appear in the order-books and sales-books which you have. These weekly statements do not appear in the sales or order-books. These statements are the only record we have of sales made by outside establishments.

Sales-book A---I, shown witness, and his attention is called to an entry on page 86, and he is asked—I notice in an entry on page 86 being an account of a sale of a bed spring, &c., that you have your private mark indicating as you previously explained the transfer of the account to the journal, will you be kind enough to state whether the private mark in this instance means that the account has been transferred to the journal?

A. It does. The entry, there set-forth, relates to the sale of an Everitt bedstead. Wherever that entry or mark is seen with reference to the Everitt bedstead it means that that

entry had been transferred to the journal. The journal does contain entries of the Everitt bedstead but no original entries I am positive as to that. Every entry appearing in the journal must first appear in the sales book, from which it is transcribed to the journal.

(Mr. Bowman calls upon the defendants to produce all the receipts and receipt-books showing receipts given by Mr. Everitt to the defendants for moneys paid by them to him for royalty, and also the book showing the account-sales of his patented bedstead in which they kept a separate account for his (the plaintiff's) inspection.

Mr. Otterson replies that the receipt books and receipts referred to will be produced, and, of the books called for the plaintiff has been furnished with copies from month to month and copies have also been furnished under call from the plaintiff in this proceeding. The originals will now be produced.)

Q. Mr. Roberts, have you any books showing the amount or number of the Everitt bedsteads manufactured by the defendants?

A. I think we have.

Q. Where are those books?

A. Most of them in our office.

Q. What do you call them?

A. We have no special name for them. They are merely small blank books in which the record of the piece workers' time is kept. They do not show all the goods mauufactured under the Everitt patent and the improvements. They do not show *all* because for several months at the beginning of the manufacture of these bedsteads they were made by day work and only a record of the men's time kept. With that exception they contain a record of all the articles manufactured under the above mentioned patents and the improvements.

Adjourned to meet Wednesday, March 5th, 1879, at 3 o'clock, p. m.

Wednesday, March 5th, 1879.

Present:—E. Coppee Mitchell, Esq,, and W. P. Bowman, Esq., for the complainant. James H. Otterson Esq., for the defendants.

E. E. Everitt Esq., in person, and Hale Esq., in person.

Plaintiff calls, through M. Mitchell for city order-book, foreign order-book and sales book from August 1st, 1878, up to the present time.

Mr. Otterson replies that he declines to furnish accounts since the filing of this bill. We have already furnished every book that has been called for with the exception of those and except some which are in constant use in the counting-room hourly, as to these latter the proposition was made to plaintiffs counsel that it would be a convenience to us if their expert would examine them at the counting house of the defendant. That every facility would be furnished them there for making the examination and I understood that the offer had been accepted and did not know until this minute that the examination had not been made.

The master is of opinion that under the decrees referring the cause to him it is his duty to take an account of all and every, the bedsteads and furniture, manufactured by the defendants under the patent, and the improvements mentioned and referred to in the Bill after 16th April, 1874, and of all moneys realized from the sale of the same, and he therefore directs the defendants to produce the books if any, showing the moneys realized from the sales if any, after 16th April, 1874, and down to the present time.

Adjourned to meet Thursday, March 18th, 1879, at 3 o'clock, P. M.

Thursday, March 13th, 1879.

Present :—E. Coppee Mitchell, Esq., W. P. Bowman, Esq., E. E. Everitt, Esq., James Otterson, Esq., Owen D. Roberts, Esq., H. S. Hale, Esq., and Mr. Hoffman, the Defendant's Accountant.

F. L. Hoffman, sworn by Examiner.

I live at 1721 Wellington street. I am a public Accountant, and Collector. It is part of my business to state accounts from books and settle them. I have examined the books of the defendants so far as they have been given to me.

Q. Did you have with you in making that examination, statements furnished by the defendants in this case as their account and marked Nos. 1, 2, 3 and 4?

A. I took those statements and examined them.

Mr. Otterson objects to the witness being interrupted at this point by the Counsel, until his answer is completed.

I found it utterly impracticable to cheque off the returns as therein stated in a satisfactory manner or in other words lead me to further confusion of which I had experience.

Q. Did you compare those statements with the books of the defendants?

A. I attempted to compare those statements, as I said before, but from the number of duplicates of each and every article as therein described, without the name of the purchaser being therein attached I found it utterly impracticable to make any comparative test so far as a recapitulation of the whole amount as would be required.

Q. Did you make out a statement of Mr. Everitt's account from the books of the defendant?

A. I made out, so far as it was feasible, a verbatim copy of the goods entered in their order books and in their copied bill books otherwise called sales-books.

Q. Did the account so made out by you agree with the account made by them?

A. It does not in the slightest particular.

Q. Is your account correct as shown by the books of the defendant?

A. My account is a verbatim copy from their books of original entry testified to as containing all the goods sold under the Everitt improvements and the patent.

Q. Do the books of the defendants show whether the goods manufactured under the Everitt patent and the improvements, were sold wholesale or retail.

A. In a technical sense I can see nothing but by retail.

Q. Explain how these goods were sold by the defendants?

A. The goods sold in the city of Philadelphia, are the customary retail sales to strangers and there are also or have been numerous sales to the trade. I cannot call them wholesale because they are single items. The goods sold out of the city are sold to special Agents and to their own stores located in New York, Boston and Baltimore. There were no wholesale sales except to their own stores. The copied bill book discloses the fact that they have taken off, of the long price bills from 24½ to 33⅓ per cent. discount to their New York store, the Boston and Baltimore stores are not so much.

Q. Explain what you mean by the long prices?

A. The gross price as shown by the copy of the bills in the bill-book.

Q. Were any discounts taken off for goods sold to the trade, not their own stores ?

A. There was, 10 per cent. was taken off.

Q. Was any discount taken off for cash paid on delivery of goods?

A. There was, in some instances from 10 to 20 per cent. in others none.

Q. When did you find the first sales of these goods to have been made?

A. The first sale I have is Sept. 7th, 1874.

Q. From that time until the first day of January, A. D. 1879, what amount of these goods have been sold by the defendants according to their books?

A. $209,097.30 worth of these goods.

Q. Up to what time do the accounts furnished by the defendants reach?

A. November 1st, 1878.

Q. What amount of goods is shown by their accounts to have been sold by them up to that time upon which royalty was due to Mr. Everitt?

A. $144,407.11.

Q. Can you say how much of these goods the defendants sold according to the books up to the 1st of November, 1878, the time at which their account stops?

A. $200,486.30. The difference between our account and theirs up to November 1st, 1878, is $56,079.19.

Q. Book produced by witness, and he says it is an accurate and verbatim copy of the entries in detail taken from the books furnished by the defendants with the results calculated and ascertained by myself.

Messrs. Mitchell and Bowman, on behalf of the plaintiff offer a statement of their account and claim book marked exhibit No. 5, so far as their claim appears on the books of the defendants.

Mr. Mitchell offers in evidence the following receipt and due bill in the receipt book of the defendants, as follows:—

Received, Phila. May 8th, 1878, of the Hale & Kilburn Mf'g. Co. ($1,000) one thousand dollars in full consideration of assignment of patent as per contract dated April, 1878.

ANDREW STARK.

Due Bill.

Philadelphia, Feb. 23rd, 1878.

Due Mr. Andrew Stark on demand Eight Hundred Dollars, $800. xx-100.

Hale & Kilburn Mf'g. Co.
H. S. Hale Treasurer.

Endorsed:

Rec'd. Feb. 26th, 1878. On within note, seventy five. $75. xx-100

A. Stark.

Received Feb. 27th, 1878, Seventy-five dolls. $75. xx--100

A. Stark.

Received	March	8th.	1878,	$100.
,,	,,	13th,	,,	$50.
,,	,,	30th,	,,	$50.
,,	April	12th.	,,	$50.
,,	,,	27th,	,,	$25.
,,	May	3rd,	,,	$50.

Adjourned to meet Thursday, March 20th, 1879.

Thursday, March 20th, 1879.

Present:—E. Coppee Mitchell, Esq. James Otterson, Esq. Mr. E. E. Everitt, Mr. O. Roberts, The Defendant's Accountant, Mr. Hoffman. The Plaintiff's Accountant. W. P. Bowman, Esq., H. S. Hale, Esq.

F. L. Hoffman, cross-examined by Mr. Otterson:

Q. Can you turn to the original entry in each case from which your account is made in, exhibit 5, C. S. P. March 13th, 1879?

A. I can.

Q. Will you turn to city order-book L, page 628 and of the date of 27th October, 1874, and show the entry?

A. It is "1 crib and mattress $58." in my account it is $58. inside and carried out $50., the $8 being taken off for mattress.

Q. How is it that you took $8. off for the mattress?

A. By the printed list, and by other entries in which the mattress is itemized.

Q. Do you mean to say that all the mattresses were $8 a piece?

A. No sir.

Q. How did you get at the price of the mattress in that instance not having the size or quality given?

A. Because from all the investigations that I could make, $8. was the highest price paid for a crib mattress in 1874.

Q. How did any agreement between Mr. Everitt and the defendants, affect the defendants right to sell their mattresses?

A. I do not know of any.

Q. How do you know from the examination of the books whether the mattresses were sold at list price or less?

A. Because as a general thing they were itemized when above or below the price.

Q. How did you ascertain that?

A. By my practice through the books as well as referring to the list price and as well as seeing the mattresses itemized and priced throughout the work.

Q. As the two items, one in foreign order-book K, page 630, and the other in sales-book S, page 32, the former bearing date Nov. 5th and the latter Nov. 6th of the same year to the same parties for the same article at the same prices whether it has not occurred to you that the entry in the sales book is a memorandum of the delivery of the articles ordered per the order-book; and if so why the duplicate debit?

A. Because the entries do not agree and I had no right to assume that they were one and the same thing.

Q. In what respect do they differ?

A. The order in order-book says:—

One patent folding bedstead,	$150.00
One patent folding crib	60.00
One Counter pane and one pair of sheets,	6.50

Now the $31 and the $6,50 are entered $35.

In the sales-book the entry is:—

One patent folding bed-stead,	$150.00

Changed to $165 and one patent folding bedstead changed from $100, to $121.

One patent folding crib	$66.00
Two mattresses for bedsteads $31. each,	62.00
One crib mattress,	6.40
One counterpane and sheet for bedstead,	6.50
One counterpane sheet and pillow for crib,	6.25

The entries do not agree and there is no reference in the sales-book to the order-book.

Q. But these differences you do not seem to have noticed in the statement contained in your book. In the order-book you have charged:—

Nov. 5th, 1874, one patent folding bedstead, $150.00
One patent folding bedstead and crib, - - 60.00
Then page 631, one patent bedstead, - - 100.00

While in the sales book of the next day you have noted a sale of patent folding bedstead, - - $150.00
Do. Do. Do. - . - 100.00
Do. Do. crib, - - - - 66 00

with some subordinate figuring. Why did you discover uniformity then and discrepancy now?

A. I do not do either now.

Adjourned to meet Wednesday, March 26th, 1879, at 10 o'clock.

Wednesday, March 26th, 1879.

Present:—James Otterson, Esq., H. S. Hale, Esq., F. L. Hoffman, Esq., E. E. Everitt, Esq., O. A. Roberts, Esq., and E. Coppee Mitchel, Esq.

Cross Examination of F. L. Hoffman, continued by Mr. Otterson.

Q. In making your account, (exhibit 5,) what rule governs you in noting from the entries in the order-book, and in the sales-book, or did you enter from both?

A. I did at the beginning of the work. There was no connection as is usually shown in the margin of the sales book of the folio, of the order-book as that of being one and the same entry.

Q. How far did you continue to do so?

A. Up to the latter part of 1876, and after that by simply comparing the two and not entering both, knowing them to be one and the same thing.

Q. Do you think as an expert accountant that under such circumstances the account you have submitted (exhibit No. 5) can be relied upon as accurate?

A. I do, so far as it was practicable with the materials I had to work with and the general condition of the sales-books as well as order-books up to nearly the close of 1876.

Q. Question repeated.

Mr. Mitchell objects as the question has been fully and categorically answered.

A. I cannot answer the question in any other way.

Q. Do you think as an expert accountant that under the circumstances your account is accurate?

A. With the exception of the great probability of having missed a great many entries from the illegible condition of some of the pages of the sales-books.

Mr. Otterson requests to have the answer read to him and it is read.

Q. By Mr. Mitchell. You think it is? Answer by witness. Yes sir I think it is.

Mr. Otterson objects to Mr. Mitchell's interrupting the cross examination or suggesting answers to the witness.

Q. Will you point to some of those illegible pages of the sales-books to which you have referred?

A. Witness exhibits two entries from sales-books and says "here is one and here is another" and asks if it is necessary to get more than two or three. I did not take many of these, Mr. Mitchell, that is notes of places where the entries are illegible but if I could take the time I could find a great many.

Mr. Otterson tells witness that he need not look for any more. Witness says that there are some instances where whole leaves are missing and he is requested by Mr. Otterson to point these out.

A. Here is one (producing sales-book A, also marked letters.)

Q. Has this been in evidence before?

A. Yes sir; it is part of the work. (Page 662 missing, and it is between the date December 21st, 1877 and December 22nd, 1877.) In sales-book C page 668 is missing, which is a part of the work of September 22nd, 1876.

Q. Are there any others?

A. I took no notes of no more missing leaves.

Q. Do I understand, then, that in your judgment the ac-

count you have rendered understates rather than overstates the amount of the defendants liability.

A. I think that the probability is that it does understate rather than overstating.

Q. You think the duplicating of entries in your account which is brought about by including the items both from the order book and the sales-book would not have the effect of making the account inaccurate.

A. I am not aware of any duplicates in my work.

Q. Did you not say that from September 1876, to the latter part of 1876, your account included the entries both from the order book and sales-book?

A. I did, where there was no evidence given, as is customary in all practical book-keeping, of the sales-book being copied from the order-book.

Q. Irrespective of the reason which you give for excusing yourself for doing it, is it your judgement that an account thus stated is accurate?

(Objected to by Mr. Mitchell inasmuch as the witness has not admitted that he was wrong and has given no reason excusing himself.)

A. I believe I am perfectly justified in believing it to be so.

Re-Examined.

By Mr. Mitchell.

Q. Have you the printed price-list of the defendants?

A. I Have not. Mr. Everitt has it.

Q. Explain what you mean by the price-list from which you obtained information?

A. It is a printed list, or schedule of prices of certain articles, and sometimes of all the articles in that branch of business, for the use of the trade in general, to govern their sales.

Q. (Pamphlet shown witness) is this one of them?

A. Yes sir; there are two here. That is one and this is another (designating each separately two pamphlets marked "No. 6 March 26th, 1879, R. A. W." and "No. 7 March 26th, 1879, R. A. W.") These are discount sheets (two sheets pro-

duced by the witness and marked "No. 8 March 26th, 1879, R. A. W." and "No. 9 March 26th, 1879, R. A. S.") No. 6, 7, 8 and 9 offered in evidence.

Q. In cases where you found from the books an entry consisting of several entries, one of which was an entry "Everett bed or crib." And the others of mattresses or other goods, what did you put in your own account?

A. I was guided entirely by the price List, to some extent, I would say, by the price of the goods of the same number and description in other places of the books.

Q. You have misunderstood my question altogether: I mean to ask did you transfer to your own account anything, in such a case as that, except the Everett bed? Did you include the mattress or other goods.

A. No sir.

Q. I understand then, that you transferred from the books into your account, only items of sales of the Everett bed or crib?

A. That is all—with the spring.

Q. Did you find, in any case, the spring charged separate from the bed-stead in the books?

A. Not many.

Q. Did you include the spring in your account in those cases?

A. I did not.

Q. Then there is nothing in your books, transferred from the books of the defendants, except the Everitt bed and crib, in cases where the other goods were itemised and prices given for them separately?

A. No sir; there is nothing else.

Q. Are there any cases in which you found upon the book a lump charge for a bedstead and crib, and other goods, in which you carried into your account a less amount than the lump charge in their books?

A. Do I understand you to mean where the entry is lumped?

Q. Yes sir.

A. In general items?

Q. Yes sir, as for instance, if you should find an entry of "Everitt bedstead and mattress, $100." would you carry out the $100.?

A. Yes sir; but not the mattress. I would take off the mattress.

Q. In all those cases you took of the mattress?

A. Yes sir.

Q. And in all these cases in which you carried the mattress out they were by mistake?

A. I do not know of any.

Q. Then you are not aware of any case in which you charged this firm with the mattresses they sold?

A. I am not aware of it.

Q. And even where the mattress was lumped with the bed in the book, you endeavoured to distinguish, and took off the price of the mattress from the lump sum?

A. Yes sir.

Q. Can you fix the period in these books when the order and sales books appear to have gone into the hands of Mr. Roberts?

A No sir I cannot.

Q. Do you know his handwriting?

A. No sir; I do not.

Q. I understand from what you said there was a time, about September, 1876, back of which the order and sales books are not well kept; can you fix that date?

A. All prior to that date I referred to.

Q. Can you fix the time exactly?

A. I cannot; in 1876–you mean when it became regular?

Q. Yes sir.

A. No sir; I cannot fix the time. It did not come to a sudden termination as it were. It was gradual.

Q. They grew gradually better?

A. Yes Sir.

Q. Are all entries in the sales book and the entries in the order books records of the same transactions?

A. They appear to be, after the books became kept in

a regular form, previous to that there was no way of my identifying them. It is customary that they should be so.

Q. Have you in your account, in any instance charged the defendants with the same goods as having been sold by them twice?

A. I am not aware of having done so.

Q. Have you carefully avoided it?

A. I have tried to; I have two instances in which there is a slight evidence of that.

Q. Show it?

A. In the city order book, page 462. February 4th.

(Mr. Otterson objects to the witness reading his testimony from notes and asks for the production of the book that the witness may point out the entries of which he is speaking.)

Q. Refresh your memory by the memorandum which you have in your notes and inform the examiner of the instances you have mentioned?

(Objected to by Mr. Otterson.)

A. Order book Q page 462, February 4th, 1875; and in order book R. Also letter P page 31, February 3rd, shows the same entry of a bedstead sold to Kenyon.

Q. What did you do with regard to those entries?

A. I put but one entry. I had evidence that they were one and the same thing, without referring to the other.

(Mr. Mitchell offers in evidence two items mentioned by the witness as contained in the books referred to.)

Q. Is there anything in your account about royalty?

A. Yes sir.

Q. Can you point it out; where is the account?

A. Sales book S, page 101, February 13th, 1875, "Pennsylvania Railroad one set of castings and springs for patent folding bedstead, including royalty to use the same in car No. 50, fifty dollars," "Sales book B. page 224, December 14th, 1875, springs and fittings for one champion folding bedstead including royalty, car No. 50, thirty-five dollars." "Sales book C, page 613, August the 3d, 1876, one set patent folding side rails to order, 6x3 long, ash, crib style, including royalty $15.

Elisha E. Everett, sworn and examined,

By Mr. Mitchell.

Q. You are the plaintiff?

A. Yes sir.

Q. State whether it is true, as averred in the answer, that there have been settlements of accounts between you and the defendants for the monies due you under the agreement in suit?

A. There had been settlements but not according to agreement.

Q. What sort of settlements are they; state the whole truth respecting the accounts furnished you and the settlements made?

A. I would go in there and they would tell me there was so much money due me and I would receive it and give a receipt on account.

Q. Did you give a written receipt.

A. Yes sir.

Mr. Mitchell: I call for the production of the receipt signed by the plaintiff.

Q. How often where you paid for them?

A. Generally once a month, until January, 1877. Then, in the settlement of January 18th, 1877, they wanted me to give a receipt in full, I refused, as I had no statement of my account at all, from the commencement to January, 1877. Mr. C. Kilburn, president of the company, Mr. Robert, Mr. Noblitt, was present when I refused. They wanted me to take the money, but I went away without it, saying I had no statement of any of my accounts from the commencement up to that time. Mr. Roberts told me that I could go back of the receipt in full, also Mr. Kilburn and Mr. Noblitt. In the course of a few days—

That is not material as the matter now stands. Is it true, as averred in the answer, that you have been refused access to the books of the defendants for the purpose of ascertaining how your accounts stood?

A. Yes sir.

Q. It is stated here that you have not been refused acces?

A. They did refuse me access; me and my accountant.

Q. When?

A. I have got the date at home; I think it is in July, 1877.

Q. Where you ever allowed to look at their books?

A. Never.

Q. What book did they show you when you went there?

A. A book they called my account book.

Q. Have you seen it here?

A. Yes sir, I believe it is.

Q. (Book produced,) is that it?

A. I believe it is.

(Book offered in evidence by Mr. Mitchell, marked beginning on page 199, "No. 10, March 26th, 1879, R. A. W.")

Q. Do I understand you to say that that is the only book they ever showed you.

A. That is the only book, except the receipt book that I signed my receipts in.

Q. When was the last payment you received from the defendants?

A. In April, 1878.

Q. Are you sure about the month?

A. Yes sir; I am pretty sure.

Q. I only ask because they begin their account which they attach to the answer, in July, 1878?

A. I received two payments that month. You will find part on April 10th, and then you will find about April 13th, the next I think. April the 10th, you will find the first.

Q. What reason was given if any, by the defendants for not continuing the payments in the same way as they had been doing monthly.

A. I went in as I usually did, went to Mr. Robert's office and I asked him if my account was ready, and Mr. Roberts gave to me the statement of what it was. With that, Mr. Kilburn was standing back of the office, and he spoke to me, and told me the devil was to pay now, says he, "come in

here," he walks along and he carries me into the private office and there sat Mr. Harry Hale. Says he "we got a letter this morning from a man by the name of Stark, who is about commencing suit against us," and says he, "he is going to stop us." I spoke to Mr. Hale and told him to show me the letter. Mr. Hale had it in his hands and showed it to me, and I looked at it. I asked for the envelope on the letter. Mr. Kilburn looked around and he could not find it, Mr. Hale looked in the waste basket and he found it. I read that letter, and at the first glance at it, this was on the tenth day of April—I saw that the date of it had been changed from the 5th to the 10th, and that is why I asked for the envelope, Mr. Harry Hale gave it to me, and I looked at the envelope, and I saw by the envelope that it had been received at the Philadelphia post office, on the 6th, A. M. I remarked to Mr. Hale it was very strange that a letter should be dated in Washington on the 10th, which was received on the morning of the 6th, in Philadelphia. Well, he made some reply—

Q. Come to the point?

A. And then, Mr. Kilburn and Mr. Hale sitting there, threw over my statement and said I. "what are you going to do with that." Mr. Hale remarked under the circumstances they thought they could not pay me. I told them I must have some money.

Mr. Mitchell calls upon the defendants to produce that letter with the envelope.

Well, they said under the circumstances that they did not know whether they could pay me or no, but Mr. Kilburn allowed I might have a little and wanted to know how much I wanted. He told Mr. Hale that he might give me thirty dollars or forty dollars, says I, "I must have 50 or 60 anyhow." So they gave me 60 dollars, I gave a receipt for 70, which I had had 10 dollars previously. It went along a few days, two or three days, and I went in the private office, and I says to Mr. Kilburn, "by what authority do you withold my money? I want it." Well, he could not make any reply, but he said I could have my money. Well, says I, I wish you would tell Mr. Roberts to pay me then, so I went out and

told Mr. Roberts. and when I came out of the office Mr. Roberts paid me. I told them at the time, or rather told them—yes I told them at the time—that it was very strange, a letter dated Washington the 10th, should be received in Philadelphia before ten o'clock of the 6th, in the morning. I could not understand it. I knew that lawyers do not get to their offices as early as that in the morning.

Q. Proceed with the non-payment. What further reason, if any, did they give why they did not pay you?

A. Then Mr. Kilburn—I was in there off and on—seemed to or tried to make me believe he was about this Stark affair, and he told me that he would visit Washington and see about it. So the 10th of May came around. Another month's royalty was due. I went down for it as usual, and I asked Mr. Roberts for my account. He told me that I would have to see some of the firm, or rather the officers of the Company. So I waited some time. Mr. Hale came in, Mr. Harry Hale, and I asked him for my account and money; and he happened to be very busy, or at least told me he was, and had not time to attend to it, and that I could come in after dinner. I went in after dinner, and he apparently had no desire to attend to me, and apparently tried to avoid me and went off to the back part of the store. Finally I had to go and call him. He came forward and I asked him about my account. He said he could give me my account, which he did. I said "how about the money?" he said "we can't pay you anything." Says he "this Stark suit is hanging over our heads and we cannot give you any money." I demanded the money. I told him I wanted my money, and that the money they held was not their but was mine, my share of the profits of it. He refused to pay me, and told me I would have to see Mr. Kilburn the President of the Company. So I jumps in a car and goes over to the Exhibition, where I found Mr. Kilburn. They said he was there. I asked Mr. Kilburn why I could not have my money. Well, he said it was on account of Stark going to prosecute them; they was witholding my money to help pay the costs in a suit that they expected Stark to commence against them. I told him I had

nothing to do with Stark; that I wanted my money, and he talked awhile over the matter, and he said that he had seen Stark's Agent, Mr. Mason, in Washington, and that he could make an arrangement with him by paying him five per cent. royalty for the use of his patent. He also said that he could buy it out and out, or rather, Stark asked $30,000 for his patent. I told him I had nothing to do with Stark nor Stark's patent, that I wanted my money, as my agreement called for. He replied and said he would be damned if he was going to pay Stark a royalty and me one too; he would be damned if he was agoing to pay two royalties to anybody. Well we had frequent meetings from that time, two or three times a week, Mr. Kilburn wanted me to pay Mr. Stark five per cent of my seven for Stark's patent; then he could run them both together. I refused. Finally Mr. Kilburn told me that Mr. Stark's Agent had told him that Stark would take four and one-half per cent., and he was satisfied that he would take four per cent. This must have been some time in the early part of June. Mr. Mason, Mr. Stark's so-called agent, was in Philadelphia, Mr. Kilburn told me. I told Mr. Kilburn that I would like to see Mr. Stark's Agent. He said that he could make an arrangement for me with him. He saw him and told me Mr. Mason was willing to see me, and I told him to make the appointment, and Mr. Kilburn made the appointment to meet at Mr. Mitchell's office for me to meet Mr. Mason, which we did. That must have been the early part of June—They refusing all the time to pay me my royalty which was due. Mr. Otterson was present; Mr. Hale the Treasurer; Mr. Kilburn the President; Mr. R. Mason of Washington, Mr. Stark's Agent; Mr. Mitchell; Mr. Connolly, and myself. I think that is all. Mr. Mitchell advised Mr. Kilburn to pay me my money, which he refused to do, he had been advised, he said, not to do it. Mr. Otterson replied that he had advised Mr. Kilburn not to do so. Mr. Mason read over the re-issued patent of Stark's to us. He was asked what royalty Mr. Stark would take for the use of his patent, and he replied five per cent. was what he was authorized to ask; and, after reading it over, he had but little to say and left the balance of us there.

I suppose I was in at the defendant's place of business two or three times a week and most always would see Mr. Kilburn and I would ask him how about my money, and he would reply as quick as I settled with Stark he would pay me every dollar he owed me, but he would be damned if he was going to pay two royalties, one to me and one to Stark. The last time but two, there was two meetings afterwards with regard to the matter I went in there and I met Mr. Kilburn, and we sat there talking over the matter and he said that he thought he could arrange things provided I gave Stark four per cent of my seven. He said he was satisfied he could. I told him I would not talk of the matter, or intimated as much, that I wanted my money first and then I could talk to him, that I wanted my share, with that Mr. Harry Hale came up and said, what do you mean by your share! said I, "I mean my share of the profits of that bed-stead." Well, he seemed to say that my bedstead was an infringement of Stark's, commenced telling me. * * * * * I told them they need not to tell me anything about it, that I knew just what it was about, and as for Stark, or Stark's agent, all of them put together could not scare me for five cents worth, that I wanted my money, Harry Hale says, says he "if you are a better man than we are you will get it." From that time to the 9th of July, I did not say anything more about it. On the 9th the 60 days had expired, according to my agreement. I went in and told them that I was there through the advice of my counsel, and that I called for my money. Mr. Kilburn said I could not have it and he would not pay it until I settled with Stark, as quick as I would settle with Stark he would pay me every cent that was due me. As that was the 9th of July, and I usually went on the 10th of the month for my money, I thought I had better go on the 10th. So I went in on the 10th and asked for my money. Mr. Kilburn told me says he, you can't have no money now. Stark has commenced a suit in the United States court against us. I told him let him crack his whip. He said that Harry had just gone down to Mr. Otterson's with the papers that had been served on them, and no doubt that my counsel would hear of it very soon. I told Mr. Kilburn

as I was leaving, says I, "Now Mr. Kilburn, any business between us now, for the future you will have to do with my counsel and not with me". From that day to this we never said anything about Mr. Stark. Of course Mr. Mitchell received the papers and showed them to me, about Stark commencing an action in the United States district court.

By Mr. Bowman.

Q. When did you receive the last account from the defendants?

A. The last statement?

Q. Yes Sir.

A. For June. June's statement 1878. I never received but 12 monthly statements from July to July, July 1877 to 1878.

Q. Please state how those statements were furnished and what opportunities you had for ascertaining their correctness and all about the manner in which the accounts were kept?

A. I would go into the office and ask Mr. Roberts for my statement, and he would give it to me if it was ready, and I took that as the statement.

Q. Took what as the statement?

A. The statement that they rendered, I can show you some of them if you desire to look at them.

Q. Produce them if you have them.

A. (Statements produced) If I wanted to know anything I would have to go to this book (referring to No. 10) that is all the book I had, and it was very seldom that I ever looked at it, as I had never had no settlement, and I thought my looking at it did not better the condition of things.

Q. These are some of the statements they furnished you?

A. Them is the whole twelve of them. Those statements I knew did not agree with the account rendered in this book (referring to No. 10) or, rather, them statements did not agree with the goods I knew had been sold (the statements offered in evidence by Mr. Bowman and marked No. 11 March 26th. 1879, R. A. W.)

I do not think that I ever looked at this book (referring to No. 10) more than four or five times together.

Q. Before you get off, state why you know, that those statements do not agree with the amount of goods sold?

A. I do not pretend to say the amount, I mean the kind of goods, the articles that we sold. Do you want me to show some of them?

Q. Certainly! and state how you know that and why you know it?

A. I know I received no account for No. 16 beds, and I know that No. 16 beds were sold. This book (referring to No. 10) I believe has some in it. My returns have none. My statements, those that I had, did not include any bottoms of the bedsteads, did not include any side racks to the bedstead, did not include bedsteads with looking glass fronts, did not include bedsteads extra finish, ebony and gold, and I of course just thought it was not worth while to examine this book much. When this book was first started I went in there one day, Mr. Harry Hale said "Mr. Everitt, here is how we are going to keep your accounts," and he opened the book and showed me. Says I "I suppose it is all right, I know nothing about book keeping." Says I," after we get a going awhile I shall fetch in an Accountant once in awhile to look over my account, well, he closed it and put it away, and that was all that was said about the books until I went over with my Accountant to examine the books. I took the Accountant in and introduced him to Mr. Kilburn, in his private office, and stated to Mr. Kilburn that this gentleman was a competent man and I had brought him there to look over my accounts on their books. Well, he said, said he, the books are all to use now. Said he "what books do you want?" Said I, we want to commence at the beginning, the time you commenced making the bedsteads, and bring them right down to the present. Said he "All right, come in, in a day or two, and you can look over your account." I told him "you set the day" which he did. We went there and Mr Kilburn was not there. Mr. J. Warren Hale, the secretary of the company, was there. I asked him if Mr. Kilburn spoke to him about our looking over the accounts, and he said "yes." Said he "It is all right" and goes into the office and brings out

this book (indicating No. 10) and lays it down. Says he "there's your account." says I "that is not my account." That is merely an account of bedsteads and not an account of manufacture there as you agreed to give me. "Well!" he said, "that was all the account I would get" and he walked off and left me. He said if I wanted to get anything more I would have to wait until Mr. Kilburn came in. Finally, Mr. Kilburn came in, and I asked him about it. "Well" said he, "there is your account, all your account is in there." Said I, "It is not." Well he argued and said it was. I told him it was not, and that I would have to look over their books. Well, he talked around, and said there was no use of looking at them, his book-keeper could swear to those. Said I, "I did not come here to get your book-keeper to swear to this book." He remarked, saying Mr. Roberts was a fair square man, or something to that purpose. I told him that I always looked upon Mr. Roberts as a gentleman, and did not believe he would do anything wrong, but I did not come there to get Mr. Roberts to swear to that book; I came there to examine their books, of myself. Well, this was what kind of a time I had with them. I insisted upon having the books, and he would talk in a round-about way, and finally I had to come right square at him. Said I "Mr. Kilburn, will you let me have your books?; say *yes* or *no* so that I will know what to do." Said he "no." "Very well," says I, "that will do." So I went off.

Why I wished to look at the accounts was this: I went in, in July of that year, 1877, and Mr. Roberts told me that my account was so much Mr. H. S. Hale looked over the account, and made it so much and I thought it was very strange. There was another account. There was three different accounts made of the amount due me that month. I made up my mind I was going to know whether they were right or wrong, so I thought I would have to go over the books. Then, also, they refused me at the time to pay me for the No. 10 and No. 11 bed—what they called the No. 10 and 11; and I refused to accept my money without they did pay me, and then it ran on. They allowed I was getting too much royalty.

I felt as though I was not getting what I ought to have, and finally, a friend of mine and also of Mr. Kilburn's met me in the street one day,—

Q. Never mind what was done in the absence of the defendants. If anything was said in the presence of the defendants, you can state it. If they were not present you cannot state it.

A. I went there, sometime, it must have been in the latter part of July, or sometime in August, 1877, may-be, and took with me Mr. John Noblitt, who is a friend of Mr. Kilburn's and also of mine. Mr. Noblitt and myself went there by appointment, to talk over the matter and settle it between us, between the company and me. Mr. Kilburn allowed that if we would set down by ourselves and talk the matter over he thought it would be easily settled. I told him I would, with Mr. Noblitt present. Well, I went into the private office, and Mr. Kilburn allowed I was getting too much royalty and he told Mr. Noblitt and myself, and went on to explain why and all about it, saying that this seven per cent royalty was ruining the business. He wanted me to reduce that royalty to one half what it was, three and a half per cent, and Mr. Noblitt was in favor of my making a reduction, but I refused to do so. We talked the matter a long while over there, and finally Mr. Kilburn said that I would ruin the thing if I did not make the reduction, and that they would stop making, or just make enough so as to hold the bed, and keep others from making it; that they would take and put two or three in a store and did not care whether they were sold or not, stick them in a back part of the store and make no effort to sell it, if I did not come to his terms. Finally, I got warmed up a little, and I told him they could do just as he pleased, and all I wanted was exactly what my agreement called for; I wanted every penny that it called for and not one cent more nor less; I didn't want anything off of him. Said I "all I ask of you is to pay me what you agreed to do, nothing more nor less." I told Mr. Kilburn, there, that when I signed that agreement I thought I was signing it with a set of men; that there was six against one, six business men and one journey-

man and workman, said I, not a set of babies. Well he would be damned if he was a going to pay it anyhow. Said I, "all right." So the time ran along then, till the 60 days had expired, and I went in again for my money. You see they forfeited all right to the title at the expiration of the 60 days after payment. I went in then for my money, and would not take it without they paid me for the 10 and 11 beds. He refused.

Q. State right there, why he refused to pay for the 10 and 11 beds?

A. He said he thought he had not ought to; that I had no right to the royalty on the 10 and 11 beds. We talked some time over the matter, he told me he had consulted five of the best lawyers of this city, and they had all told him not to pay it. As I was going out of the door he came front with me, and he stated, "Now" says he "you will go off down town, and get some petty lawyer," says he, "and take his advice and you will get into a law suit, and it will neither benefit you nor me," so I went out, him saying if I went into a suit we would kill the bed and make it no use to him and no benefit to me. "Very well," says I, "Mr. Kilburn, if I do, it will be you to blame and not me.

Q. And you did not get any settlement?

A. I got no settlement, and that was on the 10th of October 1877, that this occured, I think. So I went direct to Mr. Mitchell's office.

Q. Have you stated all the means you had of ascertaining the correctness of the defendants accounts?

A. Yes sir.

Q. And you never could get any examination of their books?

A. None, until I got them in this office. I did not finish what I was at, there—

Q. I beg your pardon for interrupting you.

A. The next morning I received a note, through the mail from the firm, stating that I should come down and get my money, as it was too trifling a matter for us to fall out about, and that they would close out the stock of bedsteads on hand

and do the next best thing. So I went down, and the first words Mr. Kilburn said to me was, if I had received a note. I told him I had. "Well" says he, "we will settle up with you, and we will make short work of this," or something to that effect; which they did. From that time until April, 1878, I got my money monthly, according to those statements, (referring to No. 11)

Q. Did you ever have any account furnished you of the goods manufactured by the defendants, other than the book which you have referred to, and the monthly statements produced here.

A. That is all, except what is rendered here to the master.

Q. Did the defendants always deny you access to their books showing what goods they manufactured and sold under your patent and the improvements?

A. They did, this once, positively deny it, and said they would not allow any one to go through their books.

Q. Do you know, whether or not, the defendants sold any goods manufactured under your patent and improvements, which they have not accounted for in their books?

A. I do.

Q. State all that you know upon that subject?

A. There is no number 16 accounted for me at all, and there is, I suppose, from one to three hundred of them made and sold, at a rough guess, there is no bedstead with looking glass fronts accounted to me for. All bedsteads accounted to me for was counted without a spring, or a spring bottom, except where there was slats in them, slat bottoms, and also a number of other beds. There is a crib—shall I pick out single ones?

Yes sir; itemize wherever you can.

A. A crib, sold to an old friend of mine on Frankford Road, John Rose, 1804 Frankford Road, (referring to sales book B, page 228, one crib No. 1, veneered, $60. one mattress $8, $68,) I do not think that they can show that to me in their accounts rendered to me. Now, there is another crib, sold February, 1878, with a mattress, for $125. I never seen any account of that, and I have their statement for that

month, and I do not think there is a crib on there for over $55, and I know one was sold for $125, with a mattress. do not think there is any here in this account, (referring to No. 10.) There was a bed and bedstead sold July the 10th. 1878, for $425, according to their accounts. No return of that was made to me. The only account I got was their statements.

Q. You say the only account you got was their statements?

A. Yes sir; and I find no account of that entry.

Q. In the monthly statement furnished you by the defendants did they make deductions on account of springs, or anything of that kind?

A. They said nothing about that. They kept them off entirely. They did not appear on my account.

Q. Were the springs a part of your patent, covered by your patent?

Objected to by Mr. Otterson.

Q. Did you present a model of your patented bed to these defendants, at the time the agreements set forth in the bill entered into between you?

A. You will have to go back to 1873. In 1873, I made a rough model. Then I made a model and sent it to the patent office. The third model that I made is here in the office, which was one which was sent to the firm. Then I made a large bed which is nearly the copy of the model I have here. The large one had a spring bottom in it; the small one had a slat bottom in it; and when the agreement was closed they were taken there as patterns for them to work by. Of course the bed was not complete without a bottom of some kind. I also took a drawing there and another model made in cottage shape. They called it a cottage bedstead. It is now in the patent-office in Canada; and they had bottoms in. The bed was not complete without a bottom. The specifications in my patent call for either a spring bottom or a slat-bottom.

Objected to by Mr. Otterson, as that is a matter of record.

Mr. Mitchell called upon the defendants to produce the patent mentioned, to which, answer was made, that the patent was in the hands of the prothonotary, as stated in the answer.

By Mr. Bowman.

Q. Did the defendants ever pay you any royalty on account of springs?

Objected to by Mr. Otterson.

A. They did; I believe; on the beds in 1874, they paid me on the bottoms, four months; not any since. I find in their account rendered to the master [objected to by Mr. Otterson] they charged me with 26 bed bottoms, $99.00, and some cents I believe it was. That was in the close of 1874. I never bought any bed bottoms off them, nor their books won't show it, and since then I do not think I have been paid—I don't think I have, for any bed bottoms—that is the royalty on them.

Adjourned until to-morrow, Thursday, March 27th, 1879, at 10, A. M.

Philadelphia, March 27, 1879.

Parties met at the office of the master. Present:—C. Stuart Paterson, Esq., E. Coppee Mitchell, Esq., W. P. Bowman, Esq., James G. Otterson, Esq., Mr. Hale, Mr. Brooks, and Mr. Everitt.

Examination of E. E. Everitt, resumed.

The witness:—I first ought to make a correction. In regard to the Rose crib on Frankford Road, I got it mixed up with some other things, and I think I am mistaken in it. That is all of that.

By Mr. Bowman.

Q. Do you want to mention something else in connection with other cribs?

A. No. I wish to commence with the first I ever heard of Mr. Stark coming on Hale, Kilburn & Co., for an infringement of his patent. About the latter end of February or first of March, the fore part of March, 1878, I was in the store, 48 and 50 North 5th, Street, and Mr. J. Warren Hale called me into the private office, and said there had been a man there from out west, by the name of Stark, and told them that they was infringing on his patent, that the Everitt patent was an

infringement of his, that he was going down to Washington, and when he got back he would commence proceedings against them. Mr. Hale told me, I think, that he saw his model, and that he believed he was infringing on this Stark's patent. He seemed to talk in that way.

By Mr. Otterson.

Q. Are you quoting Mr. Hale's language when you say he seemed to talk in that way, or are you describing his manner?

A. He said he thought we were infringing on him. I said I didn't think we was. Well, he said we was. He seemed to believe what Mr. Stark had told him, and what he had seen. I told him perhaps the day would come when he would have an opportunity to prove it before a court, and left him by saying I would be pleased to see Stark when he returned to Philadelphia. That is the first I ever heard of Stark's patent by the firm. Then, on the following 10th of April, when I went for my money, I received this notice through Hale and Kilburn of the re-issued patent, and that he was about to commence proceedings against us for infringing his patent. I told Mr. Hale that he should preserve that letter of the 10th of April, also the envelope. The envelope was torn so that it required to be tied on to the letter. I told him to tie it on, and as I was about leaving the private office I told him to preserve it, as we might want it some day. A day or two afterward I went to get a copy of that letter. Mr. H. S. Hale told me he hadn't time to hunt it up, but he would get a copy of that letter. I went in again, and he told me he had a copy of that letter made for me, and he had got John to copy it for me, and he handed a copy to me. It appeared to be the same—it might not have been word for word—but it was dated the 10th. I told Mr. Hale & Kilburn on the 10th of April, after reading this note, that that notice amounted to nothing; that they should send and get a copy of Stark's re-issued patent. At the time, it appears the appropriation had run out at the patent office for printing purposes and they could not print the copies of the patents as they were issued. So Mr. Stark's agent sent on a written copy, certified by the commissioner of patents, for the firm, or com-

pany, to look at. That must have been the latter part of April, 1878. I went in there, and they showed it to me. I looked at it, and I saw Mr. Robert's name, Owen D. Roberts and John Kilburn on it as witnesses. I told them that that was not a legal patent, that the law required that all patents should be printed, then it went along a few weeks. I went into the office. They showed me a printed copy of Stark's re-issued patent. Mr. Kilburn gave me one and said he had got about two dozen of them.

By Mr. Mitchell.

Q. Have you that copy here?

A. Yes sir; I have one copy.

Q. The one he gave you?

A. I suppose I have, but I do not suppose I can tell you which one it is. I can show you one exactly like it.

Q. If you can produce the one Mr. Kilburn gave you, produce it.

A. I know I have two or three but I do not know which one it was. He told me that Stark's agent had given him two dozen, and he gave me one, and I think he said I could have some more if I wanted them.

By Mr. Bowman.

Q. Have you told us all that took place between you and the defendants, at any time, in reference to this Stark patent?

A. I do not think I have told you all by any, means.

Q. Then let us hear all that was said or done?

A. I was in there very frequently from the 10th of May, until the 10th of July—I can say two or three times a week —and I always demanded my money. When I went into any conversation Mr. Kilburn always told me he would pay me every cent if I would settle up with Stark. I insisted I had nothing to do with Mr. Stark, nor wouldn't have. I told him that Mr. Stark and me could not sail in the same boat, and that I wanted my royalty; and he would say he was not going to pay two royalties, one to Stark and one to me, 5 per cent to Mr. Stark and 7 to me, he would be dammed if he would. He told me that frequently.

Q. Previous to this, had they stopped paying you a royalty on account of the suit brought by Stark?

A. They had stopped paying my royalty. Stark had not commenced the suit at the time. The suit was not commenced until the 8th day of July, 1878, and they with-held my money, through the advice of their counsel. So they told me.

Q. Had they received any notice, or did they pretend to have received notice from Stark, in reference to it?

A. From Stark's agent, threatening, or saying that they would commence the litigation, if we did not do something.

Q. Go on and state all that was said at any time or place?

A. I insisted—there had been no litigation commenced—that they could not withold my money; that as long as there had been no suit commenced, I contended that they had not ought to withhold my money, and they said they would because the suit might come on and I would have no money, and they would hold it to pay my share. I asked them how they knew I would have no money. That of course they could not reply to, but they did withhold it in spite of me, might was right with those men.

Q. What next did you hear about this patent to Stark? State all you know about it, the knowledge you received and how you got it?

A. We had frequent meetings. One day, while in the store, it must have been in June, we were talking about it, and Mr. Kilburn told me that Stark's agent was in town, that he was up here at 9th and Walnut, at George Harding's office, taking evidence there. I told him that I should like to see him. Well, he said I could go up and see him, so I went to see Mr. Stark's agent at Mr. Harding's office, and had about half an hour's conversation with him. He told me that Mr. Stark was willing that we should go on and make our bedstead, provided we would pay him 5 per cent.

Mr. Mitchell:—You need not tell anything unless the defendants or some of them were present.

Mr. Otterson:—That objection does not come from me.

By Mr. Mitchell.

Q. Go on, Mr. Everitt, and tell your story, until Mr. Otterson objects?

A. Mr. Kilburn, the president of the company, had told me, at two different times, that Mr. Stark asked $30.000 for his patent; and I told him I thought it was a good price for an old patent that only had about 4 years to run, and good for nothing at that. He replied "Stark's patent was not worth a damned dollar, but we are infringing on it, I believe and he has got us."

I believe I have went over about all the things you have asked me. Of course I cannot think of everything that took place—there was so much with regard to Mr. Stark.

By Mr. Bowman.

Q. Have you told us when you received the first notice of any suit having been brought by Mr. Stark?

A. Yes sir; on the 10th of July, 1878.

Q. From whom did you receive that notice?

A. A verbal notice from Cheeney Kilburn, the President of the company.

Q. What was it?

A. When I went in to demand my money he told me we had a job on hand, or something equivalent to that; that Stark had sued us, and that Harry had gone to Mr. Otterson's office with the papers, and that no doubt my counsel would get notice of it sometime during the day.

Q. Then what did you do?

A. I told them to crack their whip and go ahead, that I didn't fear any of them; but I wanted my money.

Q. Did you have any more conversations with them at any time, or place, with reference to this suit?

A. I think not.

Q. Did you never meet them or any of them, at Mr. Mitchell's office?

A. That was previous to the 10th of July.

Q. Have you told us what was said there with reference to this suit, by the defendants or either of them?

Well, they came there, met there at Mr. Mitchell's office, and Mr. Mitchell asked Mr. Kilburn why he did not pay Everitt his money, and Mr. Kilburn replied that he witheld it by the advice of his counsel. Mr. Otterson spoke up and said he advised him to withold the money, in anticipation of this suit coming on, that he witheld it for the purpose of defraying part of the expenses of the suit.

Q. What suit was that?

A. The Stark suit. That was before it commenced. Mr. Mitchell told him there had been no suit commenced, and of course he could not withold my money, according to the agreement he had with me; and I suppose that Mr. Mitchell asked him—

Q. Do not state suppositions; only what took place?

A. Mr. Mitchell asked him to give me my money, 4 or 5 times perhaps then, and the last words Mr. Mitchell says to Mr. Kilburn, as he went out the door, was "Mr. Kilburn, I hope you will send Mr. Everitt a note to come down and get his money to-morrow morning." Mr. Mason was there and read over Stark's re-issued patent, stated that he believed in his mind that Everitt's was a clear infringement of it, that he did not want to go into any litigation provided it could be settled without, and that he was authorized to take 5 per cent royalty for the use of his patent, and we could go on and make the Everitt bedstead.

Q. Who was Mr. Mason.

A. R. Mason, of Washington, who said he was Mr. Stark's agent.

Q. Was he at Mr. Mitchell's office, and with whom.

A. Yes sir; with Mr. Kilburn, Mr. Hale, and Connelly, myself, and Mr. Mitchell.

Q. Who did he come with.

A. I believe he came in alone, if I remember aright. I think Mr. Otterson, and Mr. Hale, and Mr. Kilburn came together. I think so. After Mr. Mason had got through read-

ing the re-issued patent he said that he believed he had done all that he had to do, and left before the rest of us.

Q. Is that all.

A. That is about all I can think of now.

Q. Do you know whether or not anything was said about the defendants owning the Stark patent at the time.

A. Yes sir. I know either Mr. Mitchell or Mr. Conelly asked who was the owners of it, and he replied that it stood in Stark's name.

Q. Who replied.

A. Mr. Mason; that is, on the records in the patent office.

Q. Can you state whether the defendants in making their monthly settlements with you deducted anything for allowances made to the trade, if so, state what amount?

A. They made but one discount to me, that is, all alike, whether it was a retail customer, or whether it was a wholesale customer, whether it was a furniture man, or whether it was a private citzen, agent or their own stores.

Q. They made but one discount to you.

A. Yes sir; that is, at a time.

Q. What do you mean by "at a time"?

A. Well, whenever they handed me a statement, it was all just the discount taken off the statement. They changed their discounts at different times, sometimes they took off 20 and 5; sometimes 20.

Q. When you say they took off 20 and 5 do you mean 25?

A. No sir; I mean 20 per cent, and then 5 off the balance then they took 20, 10, and 5; then one third off.

Q. How much is that?

A. Thirty-three-and-a-third, as I understand it.

Q. Do you know what discount they allow to their agents and the trade?

A. I know some of the agents and some of the trade.

Q. State what you know, from your own knowledge, and from what the defendants have said to you?

A. From my own knowledge, to the trade of this city all they allowed was 10 per cent off.

Q. Have the defendants said anything to you about the discount which they allowed to their agents and the trade generally?

A. I was a special agent for the sale of their goods myself. All they would allow me to take off to the trade was 10 per cent. I did sell at 10 per cent. off to the trade. I know they did the same thing.

Q. How long were you their agent for the sale of these goods?

A. One year; about one year.

Q. Were you; at any time, allowed to make greater deductions than 10 per cent?

A. Not to the trade. They gave me strict orders not to the trade.

Q. Do you know whether their other agents were subject to the same orders?

A. I do not know. I judge they were.

Q. Was there any arrangement between you and the defendants as to the manner in which your patent was to be advertised and the name it was to bear.

A. There was.

By Mr. Otterson.

Q. Was not that in writing?

A. Yes sir

By Mr. Bowman.

Q. Will you state whether or not they kept their agreement in that respect?

A. It was to be called the Everitt bed, they did not keep their agreement in that respect.

Q. In what way did they fail to keep it?

A. I suppose in a dozen different ways.

Q. Specify a few?

A. In the first place, they advertised it as the Hale, Kilburn Co., parlor bed; the Hale and Kilburn folding bedstead and crib. I made complaints to the firm why they did not advertise my bed as they had agreed to. Mr. Kilburn told me that it was overlooked, that it should be attended to,

and referred me to Harry. I told him a number of times about it. Finally, they sticked my name under some other, either the folding bed—they called it the Hale, Kilburn & Company's Folding Bed and Crib, and they would put in small letters "The Everitt Bedstead;" or the Champion Folding Bedstead and Crib, with the name "Everitt Bedstead," and so small you could hardly see it with the naked eye.

MR. OTTERSON—Those advertisements I take it are in print and can be produced.

BY MR. BOWMAN.

Q. Have you those advertisements in print?

A. Yes sir.

Q. Produce them.

A. Here is one. (Produced.) From the firm, February 7th, 1879. That I received from Mr. Roberts. I asked him for one while we were up taking an account of the books.

Q. Who was Mr. Roberts?

A. He is principal book-keeper for the Hale, Kilburn Manufacturing Company, Here is another. (Produced.) From their agent in Chicago. (The first advertisement produced offered in evidence of Mr. Bowman, and marked "No. 12, March 27, 1879, R. A. W.")

Q. Where did you get this second pamphlet you produced?

A. A friend of mine got it from the Tobey Furniture Store, in Chicago.

Q. Were you with your friend?

A. No sir; It was sent to me by mail. There is the envelope. (Envelope produced.)

Q. Is your friend employed in the firm?

A. No sir? he was a stranger to the firm.

Q. Have you others?

A. I have quite a number of others. Here is one more I should like to put in. (Advertisement produced, offered in evidence by Mr. Bowman, and marked "No. 13, March 27, 1879, R. A. W.")

Q. Do you know whether or not the Tobey Furniture

Company are the agents of the defendants for the sale of your bedstead and improvements?

A. Nothing further than what the advertisement says, and what I understood generally, that they were the sole agents for Chicago.

Q. Can you state from that advertisement whether it had reference to your invention.

(Objected to by Mr. Otterson.)

A. It is called here the Everitt bed, in very small letters, and also has the date of my patent on it, 24th of March, 1874, and also the dates of the patents on the improvements obtained by the firm.

Q. What is the principal name given to it?

A. The Champion Folding Bedstead and Crib; "Everitt Bedstead" in small letters underneath.

Q. Where did you get this from?

A. This is a circular I got off their stand at the Permanent Exhibition.

Q. Whose stand.

A. The Hale, Kilburn Manufactuing Company's stand at the Exhibition, September 14, 1877.

Q. Does it mention your patent and improvements in any way?

A. My name is under the Champion.

Q. Have you any other papers or pamphlets advertising your bedstead or improvements?

A. Yes sir; ("Trade Bureau" Produced.)

Q. Where did you get this paper from?

A. I got a number of those papers. I can't tell you exactly where I got that one from.

Q. Does it mention or publish your bedstead?

(Objected to by Mr. Otterson.)

A. Nothing more than giving the date of my original patent. My name is cut out entirely.

Q. Does it give any other dates?

A. Yes sir; it gives dates of other patents.

Q. Of what other patents?

A. Patents for improvements—I do not recollect the dates now—but it will show us. At least I judge they are there, and mine takes the lead.

Q. Do you mean to say that it gives the dates of the original patent and the improvements thereon?

A. Yes sir; March 24, 1874.

Q. In connection with whose advertisements are those facts published?

[Objected to by Mr. Otterson.]

A. The Hale, Kilburn Manufacturing Company. That advertisement as been in every week for the last year or thereabouts, in that paper.

(The copy of the "Trade Bureau" offered in evidence by Mr. Bowman, with special reference to page 20, and marked "No. 14, March 27th, 1879, R. A. W.")

Q. Have you any others?

A. Yes sir; the American Cabinet Maker, Upholsterer, and Carpet Reporter, of Boston, March 15, 1879. There is an advertisement, with no dates in the patent, and no "Everitt," simply called the Champion Folding Bed.

Q. Whose advertisement is that?

A. Hale, Kilburn Manufacturing Company's, 48 and 50 North Fifth Street, Philadelphia.

Q. How often have you seen that advertisement published in that journal?

A. I do not think more than twice, that is in that shape perhaps only twice. I think that is the only copy I got of it. I got a number of those advertisements.

Q. What advertisements?

A. Advertisements in different papers, some with the name on, some with the name not on. Some with the name and date.

Q. (American, Cabinet Maker, Upholsterer and Cabinet Reporter offered in evidence by Mr. Bowman, and marked "No. 15, March 27th, 1879, R. A. W.," with special reference to page 25.)

Q. What date do you mean—of the patent?

A. The date of the patent;—but always my name has got one over it.

Q. How is the one over it; in large letters?

A. Large letters, and mine in very small letters.

Q. What names did you find given this patent by the advertisements of the defendants generally?

A. Champion Folding Bedstead has been the name since about the commencement of 1875.

Q. The Champion Folding Bed, since the commencement of 1875?

A. Since the commencement of that year; somewhere along there.

Q. Do you know, or did they ever give you any reason for this change in the name?

A. Yes sir. I spoke to Mr. H. S. Hale in regard to the matter, and he told me it was the Champion Bed and ought to be called that. I insisted upon having my name in their advertisements, cards, circulars, and so forth. When I started—

Q. Have you finished in this connection? You told us you insisted upon having your name published in their advertisements and circulars?

A. Yes sir.

Q. Have you finished that; was there any other conversation on that subject?

A. Oh! We had a number of conversations in regard to the matter.

Q. Do you mean to say that you frequently called their attention to this?

A. Yes sir; up to a certain time; and then I gave it up altogether because I felt as though they would do as they pleased, anyhow, and all I could talk would not alter it any. This (paper produced) is a circular of my own that I had printed when I started the store on Second Street. I headed the circular "The Everitt Folding Bedstead and Crib, or Champion." I wanted my name ahead. I thought I had a right to it.

Q. Did you show that to the defendants as a sample of what you wanted?

A. Yes? and I had cards got up for that purpose. (The circular offered in evidence by Mr. Bowman, and marked "No. 16, March 27th, 1879, R. A. W.") (Objected to by Mr. Otterson because it is not shown that the defendants were connected with it at all.)

Q. Who had this circular published originally?

A. I had; when they seen it they sent me this note. (Note produced.)

Q. I see that this circular is headed "Descriptive of the Everitt Folding Bedstead and Crib and Champion," and that the first word, "Everitt," is erased, and the word "Champion" is written over it, and that the words "and Champion" are erased, and the words "The Everitt Bedstead" inserted; who erased those words there?

A. I do not know who done it. I think my printer, when he came to the store. I told him we would have to change it, and I think he done it so as to make an alteration in the circulars and cards.

Q. Where did you get that from?

A. I received it from my printer, Mr. Schale.

Q. Do I understand you to say that that circular shows the advertisement of your invention, as it was made originally and agreed upon?

A. To a certain extent it does.

Q. Do I understand you to say that the defendants objected to that circular?

A. They did; I had the cards printed and they got them with the same heading.

Q. Did they write you on the subject?

A. They did; yes sir. (Letter shown witness.)

Q. Did you receive that from them?

A. Yes sir.

(The letter with the envelope offered in evidence by Mr. Bowman, and marked "No. 17, March 27th, 1879, R. A. W.")

Q. Does this circular marked No. 16, show, by the

erasures in ink, how the defendants insisted upon having your bedstead advertised?

A. Yes sir.

Q. I want to direct your attention to the improvements upon that bedstead?

A. I should like to say a little more on the advertisements. In all the most prominent advertisements, my name does not appear. Such, for instance, as the advertisement on the city hall fence, at Broad and Market, for that which has been there since the fore part of 1875.

Q. Whose advertisement is it?

A. Hale, Kilburn & Co.'s, or the Hale, Kilburn Manufacturing Company, those have been renewed within the last three weeks. Three figures of the bedstead are painted there on each of the four sides of the fence.—And my name don't appear.

Mr. Otterson:—I want to object to all this subject of inquiry as not being referred to in the bill.

The Witness.—In their large banner, hanging over their store door, my name don't appear there at all, nor in fact in any of their principal signs on their store doors. In the Ledger, some three years ago, they had an advertisement there, running for a long while, and my name did not appear in it. I went to Mr. Harry Hale, who had charge of the advertising at that time, and complained to him about my name not appearing there. He was in the office with his father at the time, and he said there was not room enough for it. I told him there was room enough for some other things there. Then he said, "Why do you want it there?" I said, "Simply because my agreement calls for it, and I insist upon it, and if you do not put it there you will be sorry for it some day," and I left him. I think that was the last occasion I ever spoke to him about it, but I spoke to Mr. Kilburn when they neglected from the store to advertise that bed as they agreed to, and he always shoved it off to somebody else. It was either Warren's fault or Mr. Robert's fault, or some one of the firm, and he would refer me to somebody

else—and I got but little satisfaction. I finally concluded they would do as they pleased anyhow, and there was no use in my trying to keep them to their agreement.

Q. Is that all in relation to that?

A. I have got a number of the advertisements from the first store down to the present, where they have not used the name at all that they agreed to, published in New York and other offices, cards, circulars, newspapers, pamphlets, and a variety. All their wagons where they are advertising the Champion Folding Bed, my name don't appear; but they use that cut there, that design as their trade mark now.

Q. What design have you reference to?

A. On the front page of circular No. 16, a bedstead in a half upright position. They make it one of the leading things in their advertisements. They use it on their letter headings, bills, and in a variety of ways, and call it their trade mark. I had that design made. I got a drawing of it, with the figure of a lady putting it up, some months before they ever made a bedstead in their place. I will produce it if required.

Q. You have a model here, have you?

A. No, but I will produce a drawing I had made. That drawing is in my English, French, and Belgium patents. Would you like to see the drawing?

Q. Yes sir.

A. (Drawing produced.) I showed this to the firm at the time I had it done.

Q. What is this paper?

A. I suppose it is a drawing of my bedstead, which they took for their trade mark.

Q. Who do you mean by they?

A. Hale, Kilburn & Company, or the Hale, Kilburn Manufacturing Company. I joined them.

(The drawing offered in evidence by Mr. Bowman, marked No. 18, March 27th, 1879, R. A. W.)

They had not any bedstead made ready for same before September; this drawing was made in the spring before.

Q. About the improvements on this bedstead; I want you to state all you know about the improvements upon your original invention?

A. I know that any improvements that was to be made by either party, either them or me, was to be held subject to that agreement. If I made any improvements— (Objected to by Mr. Otterson because the agreement will speak for itself.)

Q. I do not want you to state what the agreement says with reference to the improvements. That will speak for itself; but I want you to state the improvements, if any were made, and what relation they had, if any, to your original invention.

(Objected to by Mr. Otterson because the patents themselves, which have been called for and which will be produced, will speak for themselves on that subject.)

A. The first improvement they got on my bed was the patent of Mr. Curtis. The improvement he claimed on that is the side rack and a little closet in front. Otherwise he says in his patent that it is an improvement on the Everitt bed. I think he gives the number of the patent and the date of the Everitt bed.

Q. Who is Mr. Curtis?

A. He was a member of the defendants firm when I made that agreement with them. He is now dead.

Q. You have not stated what connection that improvement has to your patent, whether any or not?

A. He says here himself (patent produced) that it has.

(Mr. Otterson objects to the witness reading from the papers.)

Q. I want you to state yourself, of your own knowledge as an expert,—while the patent would speak for itself, I want your knowledge as an expert, whether that improvement has any relation whatever to your patent?

A. It undoubtedly has.

Q. Tell us in what way?

A. They had my bedstead, and without it they could not make a crib of it.

Q. As an expert, can you tell us whether it has any other relation to your patent, as an improvement on it?

A. It has. He used the whole of my bedstead. He put on those side racks, which makes an improvement on my bed undoubtedly. The patent will show that. He uses the head board, head posts, foot posts, just as I claimed and described in my specifications, and as I showed them in my models. They insisted upon my having my patent re-issued, when they first got possession of it. I objected to it for certain reasons of my own: that if we wanted any improvements on the bed we could take out separate patents, and I suggested to Mr. Curtis that if my patent did not cover anything, that, when we took out a patent, we would try and cover it up in that, so that we could cover without getting a re-issue, and told the whole of the firm that it was all foolishness. They did not seem to be satisfied with it, so much so that they went to George Harding, a prominent patent lawyer, and got him to examine my patent, or deed, which he did, and gave them a written opinion in regard to its validity, and also to another patent lawyer at the corner of Seventh and Chestnut Streets —I don't recollect his name now, but I can tell you to-morrow—and he pronounced the patent thoroughly valid, and they apparently was satisfied at that time about it, and then they got these improvements appended, and they went along in that way.

Q. State about the other improvements. You have spoken of the first one; What relation has that new improvement to your original patent?

A. The improvements were in the mode of putting the weight in the bed. Instead of putting it in, as I had it in my bed in short blocks, he put it in long bars running across the bed, running around under the centre or fulcrum of the body of the bed, and a cape apron extending from the head-board of the bedstead to the mattress, to keep the pillows from dropping down. That is about all the improvements he claims. Otherwise the bed is the same thing, which his patent will show.

Q. Was that an improvement upon your patent?

A. Yes. sir.

Q. Or an original invention which would apply to any bed.

A. You could not call it anything but an improvement and he made it on my bedstead, and noticed it as such in the patent office.

Q. Who made the next improvement?

A. It was claimed to be made by Newcomb, Samuel N.

Q. Who was he?

A. He was at the time superintendent of their manufacturing. He is now a stockholder in the Hale, Kilburn Company.

By Mr. Otterson.

Q. How do you know?

A He told me so.

(Objected to by Mr. Otterson)

By Mr. Bowman.

Q. Did you ever see him at the defendants office?

A. Frequently.

Q. Please state what relation his invention has to your original patent, and whether it is an improvement on it or not?

A. His invention is a rod to turn the foot-board of the bedstead, they connected the rod to the base of the head-board or post, and ran it along the inside of the roller, and attached it to the foot-board, for the purpose of turning it as it goes up, to spring it into place, and as it goes down to bring it down into place. That is all the improvement out. Otherwise it is the same as my bedstead, the Everitt Bedstead, or Champion Folding Bedstead, as they call it.

Q. Is it used upon your bed-stead only?

A. That is all I ever saw it used on. It was put on that originally. I saw the original bedstead it was put on. He claims it as an improvement on my invention.

Q. Are there any other improvements upon your patent besides those you have referred to?

A. I believe there is.

Q. State what they are and in whose possession?

A. There is another patent, patented by H. S. Hale, dated December 10th, 1878, filed I think in September, 1877.

Q. Are there any others?

A. Not that I know of; there may be.

Q. Have you heard of any others, through the defendants?

A. I have not heard of any others except those made by outsiders, outside of the firm.

Q. The last one you have spoken of, was it an improvement on your original patent?

(Objected to by Mr. Otterson.)

A. It is.

Mr. Bowman:—We call for the production of the improvement last spoken of by the witness.

(To the witness.) Have you any knowledge of any other improvement?

A. Not by any of the firm or company. There were some improvements got up there by another party.

Q. Have you ever seen this paper before, (paper shown witness.)

A. I do not know that I ever saw that. I have saw one just like it.

Q. Will you be kind enough to look to the names appended there as witnesses, and state whether you know them or who they are?

A. I do, Owen D. Roberts, J. B. Kilburn.

Q. Who is Owen D. Roberts; where is he employed and what is his business?

A. He is principal book-keeper for the Hale, Kilburn Manufacturing Company.

Q. And has been for how long?

A. Ever since I ever knew anything about the firm.

Q. And who is J. B. Kilburn?

A. He is assistant book-keeper for the defendants firm, a nephew, I believe, of Mr. Kilburn the president.

(The paper offered in evidence by Mr. Bowman, marked "No. 19, March 27th, 1879, R. A. W.")

Q. If you have omitted any improvement in connection with your original patent, state what it is?

A. It is what they call "The Secretary Bed," or "Wash-stand Bedstead."

Q. In what does the improvement consist?

A. In adding a wash-stand to the bedstead, and making the front of the bedstead glass.

Q. Is that all?

A. That is about all. That is sufficient, I guess. It is sold as one and the same article of furniture.

Q. Is there any other addition you wish to make in reference to the advertising and the different names this patent and improvements have been called by the defendants?

A. I do not know that there is except in their books. There I found they called it, in their books, I guess I picked out twenty names and eighteen different shapes. To show the trouble we had to get at the beds, they were in so many different shapes, there was the Parlor Bed, Parlor Bed and Crib, Secretary Bed, Champion Folding Bed, Bedstead, and so forth. I have a list of them, but it is not worth while to give the whole of them. At least there was eighteen or twenty different shapes.

Q. By books, do you mean the defendants account books?

A. Yes sir; it was a difficult job to collect them.

Adjourned until Thursday next, April 3d, at 10 A.M.

Philadelphia, Thursday, April 3d, 1879.

Present:—The Master, E. E. Everitt, H. S. Hale.

Adjourned until Thursday next, April 10th, 1879, at 11 A.M.

Philadelphia, Thurdsday, April 10th, 1879.

Present:—The Master, E. E. Everitt.

Adjourned until Tuesday next, April 15th, 1879, at 3 P.M.

Philadelphia, Tuesday, April 15th, 1879.

Parties met at the office of the Master.

Present—The Master, Mr. Bowman, Mr. Otterson, Mr. Everitt, Mr. H. S. Hale.

Examination of E. E. Everitt, resumed.

By Mr. Bowman.

Q. (Model shown witness). What is that?

A. That is one of the models that was presented to the Hale-Kilburn Company some ten days before we entered into an agreement, which was on the 17th day of March, 1874. Afterward an exact copy of this was taken there, for them to work by—a large bedstead, with the exception of the hinges which were open, or an open fulcrum. This—referring to the model—has a slat bottom in it. The large one had a spring bottom in it. The outside casing of these beds is merely a casing. You cannot lie on it at all. It has to have a bottom of some kind or other—a spring or a slat.

(The model offered in evidence by Mr. Bowman, and marked "No. 20, April 15th, 1879. R. A. W.")

Q. When was that model made?

A. That model was made in November and December of 1873, and presented to them a month before they received the patent papers from Washington, of the bed.

Q. Is there anything else that you desire to say in reference to the model?

A. Nothing further. Here is one of the original advertisements in regard to that bed, dated October 3rd, 1874. (A copy of the Public Ledger dated October 3rd, 1874, produced.)

Q. (Advertisement of Hale, Kilburn & Co. shown witness.) Do you know whose advertisement that is?

A. Nothing further than what I see in it. I suppose it is theirs. It has their name and address.

Q. Do you mean the name and address of the defendant's firm?

A. The name of Hale, Kilburn & Co., No. 48 and 50 North Sixth Street.

(Paper offered in evidence by Mr. Bowman, and marked "No. 21, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. Have you any more advertisements of this character?

A. I have quite a number of those papers.

Q. Where are they? Produce them.

("The Fair Messenger of the Baptist Home," dated October, 1877, produced.)

(The paper offered in evidence by Mr. Bowman, and marked "No. 22, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. I call your attention to "The Public Record" of Philadelphia of March 29th, 1879, and to an advertisement on the eighth page thereof. (Paper shown witness.) Whose advertisement is that?

A. Hale, Kilburn & Co.

(The paper offered in evidence by Mr. Bowman, and marked "No. 23, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Mr. Bowman also offers in evidence:

A copy of "The Trade Bureau" of April 12th, 1879, and an advertisement on page eighteen thereof, marked "No. 24, April 15th, 1879, R. A. W."

(Objected to by Mr. Otterson.)

Also, a copy of "The American Cabinetmaker," dated May 13th, 1876, and an advertisement on page four thereof, marked "No. 25, April 15th, 1879. R. A. W."

(Objected to by Mr. Otterson.)

Also, four circulars, marked "No. 26, No. 27, No. 28, No. 29, April 15th, 1879. R. A. W."

(Objected to by Mr. Otterson.)

Also, a wood cut, marked No. 30, April 15th, 1879. R. A. W."

(Objected to by Mr. Otterson.)

Q. Take that, (paper shown witness), and look at it. In whose handwriting is the handwriting upon that paper?

A. Mr. H. S. Hale, I believe.

Q. Will you be kind enough to state what it is?

(Objected to by Mr. Otterson because the paper will speak for itself.)

A. This is merely an agreement.

Q. Cannot you state what that paper is?

A. An agreement between them and me to fit up my stand at the Centennial Exhibition, in consideration of a combined desk and washstand.

Q. Is it signed by any one?

A. No sir.

Q. Will you state whether or not it contains all the facts that were agreed upon between you in relation to the matter referred to in it?

(Objected to by Mr. Otterson.)

A. It does not. Not all of them.

Q. Then I understand it is simply a memorandum of some of the points which were agreed upon between you?

A. Yes; some. But this is the original, and I have another one.

Q. Where is the other one?

(Paper produced.)

Q, Is that executed?

A. Yes sir; that—referring to the first paper produced—appears to be the original.

Q. This, you have stated, is a memorandum, and is not signed by anybody?

A. It contains part.

Q. It is a memorandum drawn up before the agreement you have in your hand was executed.

(Objected to by Mr. Otterson.)

(The memorandum offered in evidence, and marked "No. 31, April 15th, 1879. R. A. W.")

Q. Will you state whether the defendants deducted any money from your royalty on account of that agreement?

A. No sir; not on account of that agreement.

Q. Did they on any account connected with that?

A. They deducted money from me for the examination of my patent by George Harding and another patent lawyer.

Q. What was the amount?

(Objected to by Mr. Otterson).

A. $162.50.

Q. Did you agree that they should deduct that sum from your royalty?

A. I did not.

(The agreement offered in evidence by Mr. Bowman, and marked "No. 32, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

The Witness—This agreement was not satisfactory. They agreed in it to advertise my European patents for sale at their Exhibition stand at the Centennial, [objected to by Mr. Otterson], and advertise it in all their cards, circulars, etc.; to hang cards on each article exhibited, not less than eight by ten inches in size, which they never done; and no advertisement appeared until the exhibition had run nearly two months, or quite two months, and then it appeared in such a way that you could not tell what was for sale; you cannot tell what patent it is or anything about it. [Circulars produced]. I put up two large cards on their stand, at my own expense, and one on my own stand, at my own expense; and that is the only shape, on their small circulars, on the last page, at the bottom, that they advertised it, and you cannot find out what it is that is for sale. I found fault that this did not appear there. They made some excuse, and said they would attend to it, and did, in the fore part of July, attend to it, and that is what they produce.

(One of the circulars produced offered in evidence by Mr. Bowman, and marked "No. 33, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. The last circular offered in evidence is what they produced, is it?

A. Yes sir; there was other circulars like that, of different colors. Here is another of them. (Circular produced.)

Q. (Paper shown witness.) What is that paper?

A. This is a receipt from Hale, Kilburn & Co. for $162.50.

Q. How was that money paid by you?

A. Why, they kept it out of my royalty, and I objected

to it. They kept it in spite of me, and then I wanted a receipt to show that they had kept it; and it was a long while before I got a receipt—some year and a half or two years. Finally I got it, Mr. Roberts gave it to me, he was, of course, ordered to do so, I bothered them so much.

Q. You never authorized them to contract the expense?

A. No sir.

(The receipt offered in evidence by Mr. Bowman, marked "No. 34, April 15th, 1879. R. A. W.")

(Objected to by Mr. Otterson.)

Q. Have the defendants ever refunded you that money?

A. No sir.

Q. Have you anything else to say?

A. In regard to their rendering to me accounts of No. 16 beds, 18's, 10's, 11's, 17's, etc., they marked the date of my patent, that is March 24th, '74, on the back of the headboards of the whole of them, and they done so up to the 1st of February, and I don't know but what they are doing it now, every one of them. I never saw one of them that it was not there, marked there according to their orders, as I understand.

Mr. Otterson—Do tell what you understand. If you know anything state it, but we don't want your understanding.

The Witness—Well, I know they are there on the beds, and the spring bottoms that they used in my beds are made for the bed on purpose. They are not made as they would make them if they were made for the ordinary stationary bed. The cross-bars in those beds that go into the folding-bed are made to fit into a stirrup, or made with a slot in the end of the cross-bars, to fit over a button. Where is no rail running length-wise underneath the bottoms, as is usual in the ordinary bottom made for stationary beds. They usually put two rails running lengthwise, and the top of the bed is made a little shorter than the ordinary beds, so as to turn the beds. They are made different, and expressly for that bed. If we got a bed-bottom of any kind we had to change it, alter it, so that we could use it in the bed.

(Objected to by Mr. Otterson.)

By Mr. Bowman.

Q. When the defendants would make settlements with you, would they deduct the price of the bottoms from the bed?

(Objected to by Mr. Otterson.)

A. Well, as far as I can see by their statements, they did not at first, for the first four months, or about that time; but after that they did.

Q. Did they continue to deduct the price of the bottoms from the beds, in their settlements with you, down to the time of filing the bill, from the first four months?

A. I find by their books that they did.

Q. Can you give us an idea of the value of those bottoms?

A. What do you mean! Per piece.

Q. What difference would it make in their accounts to you?

A. Well, they charged from seven and a half to ten dollars, and once in a while, I believe 12 dollars; from 7 dollars and a half, to ten dollars per piece; now I do not want it understood that all those bedsteads sold had spring bottoms in. Some had slat bottoms in, and there were some where they had no bottoms in at all. You will find in our account, that we took them just as we found them in their books of original entry.

Q. Do I understand you to say, as an expert, that the bottoms constitute part of the bed?

(Objected to by Mr. Otterson.)

A. Yes sir; they could not use the bed without a bottom of some kind.

Q. And do you claim that your patent covers a bottom for the bedstead?

(Objected to by Mr. Otterson.)

A. It undoubtedly does. It calls for it in the specifications.

Q. Have you anything further that you desire to say?

A. I wish to say something in regard to the re-issue of the Stark patent. I do not wish it understood that the first I ever heard of Mr. Stark at all was through Mr. J. Warren

Hale, the secretary of the company, in March, 1878. I knew of him before; but it was the first I heard of him in connection with the bed and the Hale-Kilburn Manufacturing Company. On the 9th day of February, 1878, Andrew Stark, of Topeka, Kansas, stopped at the Merchants Hotel, on Fourth Street below Arch, within two squares of the Hale, Kilburn manufacturing company, and remained there until the evening of the 8th of May, 1878, and left there after tea. On the 27th of February, 1878, Andrew Stark, of Topeka, Kansas, applied for a re-issue of his patent, dated August 22nd, 1865.

By Mr. Otterson.

Q. Where do you get this information?

A. I saw it on the papers you surrendered yourself, for one thing.

Q. Surrendered to whom?

A. To a master.

Mr. Otterson:—Then the papers will speak for themselves.

The Witness:—The application for a re-issue of his patent was signed by himself, and the two book-keepers in the employ of the Hale, Kilburn Manufacturing Company, 48 and 50 North 6th St. If I cannot say anything about what is in print or writing—

Mr. Bowman:—Tell anything you know of your own knowledge in reference to this matter; the papers will speak for themselves.

The Witness:—I do not know that I have got anything more now. There are things, if I could think of them, that are in print; and papers.

Cross-Examined.

By Mr. Otterson.

Q. You said that the settlements of accounts between you and the defendents were not according to agreement; what do you mean by that?

A. That they never settled up in full for me.

Q. You mean that they did not pay you in full?

A. Yes sir; and many things that they did not pay me for at all.

Q. From the very outset—is that so?

A. I think not from the outset.

Q. Do you mean to say now that they did or did not settle with you in full, at the outset, because I do not understand it?

A. I think for the first four months, or nearly so, they paid me all. I think so; I do not know for certain.

Q. Then when you speak of settlements in your direct examination, you mean payments by the defendants to you, do you?

A. I mean that they paid me once a month. I do not say that it was a settlement in full.—excuse me! I can answer that a little more fully. You will find all my receipts on account, up to, January 1877, there never was no settlement in full.

Q. You said that, prior to the first of January 1877, you had had no statement from the defendants, and give that as a reason why you refuse to give a receipt in full at that time;—had they refused to give you a statement? Do you mean to convey that idea?

A. The accounts had been unsettled—

Q. Will you not answer my question now, and say nothing else? Had they refused to give you a statement?

A. They always promised me, when I asked them, that they would give me one; but did not do it. They did render me a statement, or rather gave me a statement, but it was not the statement that my agreement called for, by any means. I think they—

Q. Was that January 1877? or about that?

A. I think, about that time, they did render me an account, but it was not anything like the agreement calls for.

Q. And that is the one you refer to—the one about January 1st, 1877?

A. They rendered me an account—

Q. You do not answer my question! Was that account, which was not according to your agreement, the one you referred to as having been rendered about the first of January

1877? Won't you answer my questions, and stop your long speeches?

A. They rendered a statement, as they called it ; but it was no statement like my agreement calls for. It did not give the number of bedsteads sold and made, at all.

Q. Was that the one you referred to as having been given you about the first of January, 1877?

A. I believe it is.

Q. Was there not a delay in rendering your statements because of hesitancy on your part as to the form in which you would have them put?

A. No Sir.

Q. Did not the defendents offer to make statements to you, according to your directions, from the very beginning?

A. They did not. When I went from them, I ask them about it—finally, I dogged them until Harry Hale himself said that he didn't know how I wanted them. Said I "read your agreement and that will tell you" and he did, and then rendered them, but he did not render them then as he ought to have done. There were no use in his asking me. The agreement told him.

Q. You said that you were refused access to the defendant's books?

A. I was.

Q. Do you know Mr. Noblitt?

A. I do.

Q. Did not he and you spend several days going over the books, at the defendants counting room in July, 1877?

A. No sir.

Q. Did not Mr. Hoffman and you do it?

A. No sir.

Q. Did you never do it?

A. No sir ; Mr. Hoffman and me were refused the books.

Q. By whom?

A. By Mr. Kilburn, president of the company.

Q. Who was present?

A. Mr. Hoffman and myself.—Also Mr. J. Warren Hale refused to give me the books.

Q. Who was present besides yourself and Mr. Hoffman and Mr. Kilburn?

A. Mr. Roberts was in the office; I do not know whether he heard what was going on or not.

Q Have you the copy of the letter of Stark, of April 10th, 1878, which was furnished by Mr. Hale?

A. Yes sir.

Q. Will you produce it?

A. (Copy produced.) I do not know that this is the identical words of that letter; but I ask to copy it, and Mr. Hale said he would have it copied for me, and that is the copy he handed me, and said that John had copied it. That letter I saw the morning of the 10th, about ten o'clock, in their office.

Q. Did you know of the Stark patent prior to this letter of April 10th.

A. I did.

Q. When did you first learn of it?

A. The first that I ever knew anything of Stark's patent was through Mr. Howson, when he wanted to have my patent re-issued.

Q. And when was that?

A. That was in March—April—June;—we had talked over it considerably—of 1874.

Q. And your patent was granted when?

A. My patent was granted March 24th 1874.

Q. Was not your application for a patent rejected, again and again, because of the interference of Stark's patent?

A. I found afterwards that it had—

Q. Won't you answer my questions and then explain as much as you like.

A. I believe it was rejected.

Q. On account of its conflict with the Stark patent is the question?

A. Well I cannot say on what ground. I know—

Q. Stop! do you not know that because of the existence of the Stark patent and the Maine patent, and others, cover-

ing the same ground as your specifications, that your applications were repeatedly rejected?

A. Not, at that time, I did not know. I knew afterward. I found out afterward, after my patent was granted, that it had been rejected on account of Stark's patent, but I do not know on what grounds.

Q. Was it not rejected three or four several times?

A. Not to my knowledge. It might have been— My agent did not tell me the particulars.

Q. You have said that the statements that were rendered you by the defendants did not correspond with this book. "Referring to the plaintiffs exhibit No. 10." Wherein is the difference?

A. Well, I believe you will find No. 16 beds in this book and not in my statements. All No. 16 beds 10's 11's 17's and 18's, have the improvements made by Cheney Kilburn in; that is the iron running cross-ways to the bed, and the apron is used in them beds. In fact all the beds made since 1875 had his improvements in.

Q. What was there in the beds you have mentioned by numbers covered in your patent?

A. To commence, they used the open fulcrum or open hinge in all their beds, which belongs to me, and the improvements were made on my bed, that they used in it, originally, and which I have as much right to as I have to my own original bed.

Q. I want to know in what respect the beds that you have enumerated used the claims of your patent; was the open hinge the only thing?

A. No; the base was made the same as they made mine, with the exception that they did not extend up the end piece so high; they used the headboard the same way, and they used the front the same way as I did.

Q. Are you speaking of claims that are mentioned in your patent and points that are covered by your patent?

A. I am speaking of the specification and description of my invention. Many a time a man don't claim all that he is entitled to.

Q. Did you ever see either a bed, or a drawing, of Stark or Maine's patent.

A. I saw Maine's patent, and bedstead; I saw the drawings of Stark's.

Q. Do not they both use a headboard?

A. They do.

Q. Do not they both use a base?

A. Yes sir.

Q. Is not their head board like yours?

A. They make it in a variety of ways.

Q. In principal, I mean; I do not mean in detail?

A. None of them made a head board with posts, to have a folding bed, except me.

Q. Did any of them use a base but you?

A. Yes sir.

Q. They both used a base did they not?

A. They have to have a base of some kind.

Q. In what other respects do you claim that the accounts rendered you failed to correspond with the book which is marked No. 10?

A. I ought to have them statements here, but I believe that I can say, without making any examination, that there are No. 16 beds in the book, and they are not in my statement.

Q. So you have said; and now I ask you: in what other respects is the accounts different?

A. I don't think there is any 17's or 18's in my statements.

Q. Are you sure of your answer?

A. That is about as near as I can come to it, without examining the statements themselves. I know they differ. I did not examine them much. I can probably give you a little more satisfactory answer in regard to the base of that bed differing from Stark's and Maine's, if you require it.

Q. Well?

A. Mr. Stark's or Mr. Maine's patent does not call for any weights in the bottom of their bed. Mine does. Neither one of them does. That is another difference.

Q. Is that your further answer in explanation of the infringement upon your beds?

A. That is just merely telling you the difference.

Q. Do you say that your bedsteads were the first in which weights were used?

A. I do not.

Q. Do you claim the principle of the use of weights?

A. I do not.

Q. Is that part of your claim?

A. I describe them in my specification.

Q. Do you claim them as part of your patent?

A. I claim that as part and parcel of the bedstead, to make it complete.

Q. Do you claim the open fulcrum, or hinge, as part of your patent?

A. I do, as part and parcel of my invention.

Q. Is it in your patent?

A. It is described in the specifications and shown in the drawings.

Q. Is it in your claim?

A. I do not know that it is claimed of itself. I do not think it is; but it is part and parcel of the bedstead.

Q. Do you claim that it was novel?

A. I do, and new to a bedstead.

Q. Do you claim as part of your invention the bottoms and the springs?

A. I undoubtedly claim it, as much so as I would the head board or the foot board, or the feet of a bedstead, or any part of a bedstead, because it is not complete without them. My specifications calls for a bottom of some kind. I describe in my specifications that we can use any kind of a spring bottom in that bed by having them made for it; that is, we cannot use the string without some alteration.

Q. Could not ordinary springs or bottoms be adapted to your bed?

A. They can, by changing—any springs.

Q. Is not that true of the Stark or Maine bed?

A. I do not know anything about that; I suppose it is.

Q. You say that there was no report to you, in your accounts, of bedsteads with looking-glass fronts, and extra finish, ebony and gold,; do you mean to say that they were not accounted for as bedsteads, independently of this extra finish?

A. I mean to say that no such bedsteads appeared in my accounts, and I know there has been such bedsteads sold.

Q. Do you mean to say that they were not accounted for to you as bedsteads, without reference to the extra expense that had been put upon them in their manufacture?

A. I cannot tell that.

Q. Who was the accountant that you spoke of as having been with you when you were not allowed to see the books—was not that Mr. Hoffman?

A. It was Mr. Hoffman; yes sir. Would you like to have the date of our visit there?

Q. That is not material.

A. I have the date—we were there twice—if you would like to have it.

Q. Where are the accounts that were rendered to you in the month of July, 1877, and which did not accord one with the other?

A. That is the month that I received the first statement from them of bedsteads sold.

Q. You say that there were three accounts rendered you in that month, and they were all different. Where are they?

A. I will have to explain that a little, if you have no objection. I went and asked for my account. I asked Mr. Roberts, and he generally told me. I asked him how much my account was, and he said it was so much; that is, giving the amount without any written statement; and then he changed it, and said he had made a mistake or something, and it was less. Then, when Mr. Harry Hale gave me the statement in writing, it was different again. So there was three different statements; two of them verbal, and one written.

Q. All given on the same day, did you say?

A. No sir. Well, Mr. Hale told me he was busy, and I had not time to wait. I suppose I would have got the writ-

ten statement if I had waited for it, but I got it in a day or two afterward. He had made it afterward. These mistakes do not amount to much, but there was a difference. I do not think it was intentional.

Q. Nor was it material, you say?

A. Well, I think there was a few dollars difference. I would go in, and the first thing I would say would be, "Mr. Roberts, is my account made out?" He would say, "Yes." I would say, "How much is it?" and he would tell me.

Q. Without looking at it?

A. Sometimes he would, and sometimes he would not. Sometimes he would take this book and look at it and say, "Your account is so much."

Q. I am asking particulars about this time in July, 1877?

A. I could not say whether he looked at it or not, but I judge that Mr. Roberts thought he was right.

Q. Did you object to them that there was a difference in the statements?

A. Not until after I got my account off. I was about getting that account; insisted upon having it, right or wrong. That was my first statement, and I got tired of asking for it, and said that I must have statements for the future; that I wanted to know how I stood; and I told Mr. Kilburn, that is, the president of the concern, that it was very strange.

Q. That was in July, 1877, was it, that you are talking about?

A. That was July's statement that I got in August. I mean for July's account. Sales made in July they rendered in August. The 1st of August it was due, and it was not an unusual thing for me to go in there after the 1st of the month and say to Mr. Roberts, "How is my account going to pan out this month?" and he would say, "Pretty well," or something to that effect; or he would say, "Not very well;" and I suppose that I have asked Mr. Warren Hale, and Mr. Harry Hale, too, how my account would be for that month Sometimes they could tell, and sometimes they could not. The account was not made up.

Q. Do you still insist upon the statement that you never got an examination of the defendant's books until they were examined here, in the Master's office?

A. I never saw any book but this. (Referring to plaintiff's Exhibit, No. 10.) Never. No book of account. I saw them lying on the desk, but never went in to examine them. This is the only book they ever offered me, either the secretary or the president. They refused to give me any other. I said this had none of the manufacture in, and was not a full account. I said that to both the secretary and the president.

Q. And that was your principal objection, was it not, that it did not contain an account of the manufacturing operations?

A. No sir; there was other objections.

Q. But you made that, among other objections?

A. That, among others. I find, according to their account of their manufacture here (in the office of the Master), they never give any account of the manufacturing of any bedsteads until February, 1875, and then there was an account of bedsteads; but you could not tell what they was or what kind.

Q. Giving you an account of the manufacturing of bedsteads?

A. Yes sir; that is, before the Master, some six months after bedsteads had been sold.

Q. You say that they charged you $99.00 for 26 bed bottoms?

A. Yes sir.

Q. In the close of 1874, was not that a charge to correct a prior mistake in the account?

A. I cannot tell what it was. I see that they charged me with that many bed bottoms that I never bought at that time.

Q. And that is all you know about it, is it?

A. I found it on the statement they rendered to the Master here. I had no account of it until I saw it here, in this office. Never. They kept it off me, me not knowing it at all until I seen it here on the statement rendered to the Master.

Q. And you say that that is all you know about it, is it?

A. All I know is seeing it here; and I know that I never bought any, and I never heard of it from 1874 up to now, except in this office. They never gave me any account of anything of that kind.

Q. Did not Mr. Harry Hale tell you that they had allowed you a royalty on these bottoms to that extent,——

A. Never!

Q. Wait until I get through——and that it was by mistake, and this entry was made for the correction of that mistake?

A. Never, to my knowledge.

Q. I call your attention specially to it, because I am instructed that the question I have asked is upon the line of the facts as they were. Do you still say that he never did?

A. He never did, to my knowledge. Will this book (referring to plaintiff's Exhibit, No. 10) show it? Will Mr. Harry Hale show it to us in this book?

Q. Yes. I call your attention to an entry on page 201 of this book, at the close of December, 1874, "Less spring, to 26 beds, $130 00, $99.45." Is not that the item?

A. Well, I see it here now, but I never noticed it before, because if I had I should have surely spoken of it. Can I make a little explanation about this book (plaintiff's Exhibit, No. 10]?

Q. Yes sir.

A. I do not think, as I said before, that I ever saw the book over four or five times, but it might have been there, me not knowing it; but if I had known it being there, I would have surely said something about it, because they had no business to charge me with springs.

Q. When did you first mention the matter of Stark's patent to Mr. Kilburn, or to any of the firm?

A. I think I am certain that Mr. Kilburn spoke to me first about it. It came through Mr. Howson, their patent agent. He examined my patent, and wanted it re-issued; and I wanted to know on what account, and he said on account of Stark's patent, and he said also on account of

Maine's patent. This was the excuse, and they insisted upon me having it re-issued, and I objected to it.

Q. The question is a question of time. When was this?

A. This was soon after the signing of the agreement on April 16, 1874; that is, along some two or three months afterwards; four or five months probably.

Q. Was it not longer still?

A. It was not till after George Harding and Mr. Collier examined my patent, and gave a written opinion as to its validity, and not infringing on those particular patents. They gave their written opinions.

Q. To whom?

A. To the Hale, Kilburn Manufacturing Company, or rather Hale, Kilburn & Company. They have them. I saw them.

Q. When did Mr. Kilburn, or the defendants, first know of the Stark patent, as far as you know?

A. I think that Mr. Howson told them.

Q. Well, this was at that time, four or five or six months after this, was it?

A. It was right there, because Mr. Kilburn had him hunt up my patent and all patents relating to the bedstead, and they were the ones they found which they supposed would come in contact with me. Mr. Kilburn wanted other advice besides Mr. Howson's on it.

Q. And this was several months after this contract had been entered into with Mr. Kilburn, or the company, as I understand you?

A. They made me——

Q. Won't you answer my question?

A. I think it commenced right away, because Mr. Howson said that my patent should be re-issued.

Q. Please answer the question?

A. He told us, right on our signing the agreement, that my patent would have to be re-issued, on those two patents, and I objected.

Q. What did you mean, a moment ago, in that connection, by saying it was three or four months afterwards, and might have been longer?

A. I will tell you why. I did not want my patent re-issued if I could help it, and we talked the matter over, and talked it over, and finally Mr. Kilburn says, "I shall see a first-class lawyer, and if he says that your patent ought to be re-issued, we will have it re-issued." I told him, "All right." After he saw him, and seen two, and when they gave their written opinions that it was valid, they dropped it. I think that you will find that it was some three or four months that this written opinion was given after this signing of the agreement. That is a rough guess.

Q. Did they know anything of either the Maine or the Stark patent at the time of this agreement made with you?

A. They were the first ones who told me about it. It was my first knowledge—it came through Mr. Howson—of the existence of those two patents. My attorney never told me anything about it. My attorney got so much money to get me a patent, and he was very careless about it, in one sense of the word. He got the patent, and did not tell me anything about what it was rejected for, if it was rejected. There is not one patent in a thousand that goes through the office without being rejected.

Adjourned until Tuesday next, April 22d, 1879, at 3 P. M.

Philadelphia, Tuesday, April 22, 1879.

Present—Mr. Mitchell, Mr. Bowman, Mr. Everitt; Mr. Otterson and Mr. H. S. Hale.

E. E. Everitt, re-examined.

By Mr. Bowman.

Q. I understand you have some corrections which you desire to make in connection with your testimony at the last meeting. If you desire to make any corrections, do so.

A. When you asked me about this memorandum and agreement in regard to the Centennial stand at the exhibi-

tion, and wanted to know whether they had kept any money on account of that agreement or memorandum, my answer was "No" where it ought to have been "Yes."

Q. Can you state the amount which was deducted from you by the defendants on that account?

A. Not exactly. I have got bills to show it.

Q. Have you the bills here?

A. I have some of the accounts, I think. (Bills produced.) They was to fit up my entire stand, except the platform.

By Mr. Otterson.

Q. Was not this agreement in writing?

A. Partially in writing.

Q. Then let us have the writings first.

A. You have them.

Q. Where are they?

A. They were offered in evidence last week. They was to fit up my entire stand, except the platform. I was to pay for the platform and the sign, and they were to fit up the rest in consideration of the surrender to them of a patent of a combined wash stand and desk, which I have an agreement drawn up to their orders, but not signed.

By Mr. Bowman.

Q. Has this bill anything to do with it? (Bill for $90.80 shown witness.)

A. Yes sir; it is part correct and part not.

(The bill offered in evidence by Mr. Bowman, and marked "No. 35. April 22d, 1879. R. A. W.")

Q. Please state what part of that bill contains proper charges against you under your agreement with the defendants?

A. The platform is proper. I ought to pay for that. And the lettering of the sign is correct, as I told them I would have it lettered myself. There was nothing said about it. The railing, washes and posts I had not ought to have paid. The carpet they bought without my authority. They did not ask me anything about it, but put carpet down on my

stand as they did on their own, and charged me with it. Mr. Harry Hale himself went and bought it, and after he bought it, he told me he had. I told him he ought to pay for it then.

Q. Was the whole amount of that bill deducted from you by the defendants in their settlements with you?

A. No sir; not the whole. Hold on. Yes; the whole of this bill. They paid these, and then they took it out of my royalty, when it became due, $90.80. There are two or three bills mixed up together.

Q. Can you give the exact amount which, under your agreement with them, should have been deducted?

A. Well, they could not deduct according to their agreements, both the written and the verbal, they had with me, but thirty-five dollars.

Q. And do I understand that you claim the difference between $35 and $90.80.

A. I do.

Q. Look at that paper (paper shown witness). Are there any charges made against you in that statement, and amounts deducted from you by the defendant which should not be charged and deducted?

A. Yes, sir.

Q. State what they are?

A. "One half of fees on bedstead $162.50." For some pattern work $4.20. Then there is a bill of $10.08. Then there is a bill of $1.44. Then there is another bill for $1.26. There is one entry or charge that I do not know what it is for, "Eli Love," but those other charges I mentioned I hadn't ought to pay. I can tell you what they were for.

Q. First let me ask you: were the sums you have mentioned deducted from your royalty by the defendants in their settlements with you?

A. They was.

(The statement offered in evidence by Mr. Bowman and marked "No. 36 April 22d 1879, R. A. W.")

By Mr. Otterson :

Q. Do not these things appear on the statement?

A. They appear in their books, I suppose.

Q. On the accounts they rendered to you?

A. Here is the accounts they rendered. (Accounts produced). They don't show here. I can show what they are for and why I should not have ought to pay for them.

By Mr. Bowman :

Q. Go on and tell us why you should not have paid those sums?

A. The balance of this was for making an experiment in the bedsteads. Mr. Kilburn told me if I could go to work and do a thing it would be of great benefit to us. I told him I would, provided he would pay the expenses, and he said he would, and I went on and ordered the wood, and spent some seventeen or eighteen dollars, and Mr. H. S. Hale came up there and told me, "Mr. Everitt, if you experiment any more on that, you will have to do it at your own expense, not ours. Said I, "all right." It appears they were satisfied it would not suit them. Well, they paid the bills, promised to do so, and my agreement says they would pay the expenses of this invention. I objected to it when I came to get my money, but they took it off me, kept it back in spite of me. There is some other things—I don't know exactly where they are now.

Q. Have you cleared up all about the agreement for fixing up the Centennial stand?

A. I believe I have. They was to fit up the stand, all except the platform.

Q. Are there any other corrections or statements you wish to make in connection with your examination at the last meeting?

A. I wish to make a correction where you asked me the cost of the spring beds per piece, and I told you from seven and a half to ten dollars, and sometimes twelve. I meant the spring beds that they were making in their factory, that that was about the price they charged to us but I don't mean all the spring beds that goes in that bedstead, by any means.

They have spring bedsteads there that I think they come as low as 2½, 2¾, 3 dollars and 3½, and of course it would be wrong to include them at $7 when they only cost $2 or 2½.

Q. I understand your claim to be that you are entitled to your share of loyalty on the springs, whatever they cost.

(Objected to by Mr. Otterson.)

Q. Is there anything else you desire to say in that connection?

A. Not that I can think of now. I desire to make a correction of an entry on the minutes. The minutes state that the store I had was on Second street; it ought to be 1315 Chestnut.

Now, in answer to Mr. Otterson, I made a remark in regard to my agent. I do not wish to convey the idea that he is incapable of transacting business of that kind, because I think him one of the most capable in this city, and he done business with me as he done with everybody else at that time, and I could not expect him to do anything more than he did do in regard to getting my patent. As for its being rejected four times on any patent, it never was. The patent office does not allow any one to come up for four times; and as for Mr. Stark's patent, I do not know to this day whether my patent was rejected on it. I want to say further that it was after the agreement was signed some months before ever I saw a Maine bed. I said I had seen them, but I don't want to convey that I had seen them before I had made mine, because I never did. It was a thing understood by all parties.

Q. Is that all the corrections you have to make?

A. That is about all the corrections I can think of now.

Q. Did you state in your examination-in-chief what the defendant's agreement was as to how your patent should be named and advertised?

A. Yes sir.

Q. Please look at that card, (card shown to witness), and state whether it publishes your patent as you agreed upon with the defendants?

A. It does, with the exception that there is a name added underneath, "The Champion."

Q. Did the defendants object, after making the agreement with you, that it should be published in that form?

A. They did.

(The card offered in evidence by Mr. Bowman, and marked, "No. 37, April 22d, 1879. Re A. W.")

(Mr. Otterson notes an objection to the three exhibits offered in evidence to-day.)

Adjourned until Monday next, April 28, 1879, at 1 P. M.

Monday, April 28, 1878.

Present—The Master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson and Mr. H. S. Hale.

Mr. Mitchell.

I offer in evidence all the books of the defendants which have been produced here, and referred to by Mr. Hoffman in his testimony, and by the other witnesses.

Also, the patents for improvements.

Also, the certified copy of the patent re-issued to Andrew Stark, produced by defendant on call.

Also, all the receipts, and receipt-book containing such receipts given by the plaintiff to the defendants for moneys paid to him.

Also, the accounts purporting to be monthly statements produced by the plaintiff, furnished by the defendants to him showing the royalties to which he was entitled.

Also, the weekly returns from the branch stores of the defendants to them, showing the amount of sales and receipts of the Everitt bedstead and improvements.

I also renew the call for the letter and envelope shown by defendants to the plaintiff, as related by the plaintiff in his testimony-in-chief, on the 26th of March, 1879, upon page 28 of the testimony, and as called for at the time, on page 29 of the testimony.

I also call upon the defendants to produce the contract between Andrew Stark and the defendants, referred to in the due bill in evidence.

Also, the prior contract between Stark and the defendants for an absolute assignment of Stark's right to them.

I also call upon the defendant to produce the copy of the bill filed in the circuit court of the United States, which copy was sent by Mr. Otterson to the plaintiff's counsel for examination, contained in his letter of 7, 10, '78.

I also offer in evidence the said letter of Mr. Otterson, defendant's counsel, to plaintiff's counsel, as follows:

"No. 16 North 7th St., Phila., 7, 10, '78.

E. C. Mitchell, Esq.

My Dear Sir—The enclosed was brought to me this A. M. by the defendants therein mentioned. I send it to you for examination, and for the examination of Mr. Everitt, your client, when you will please return it to me; and I want whatever information and assistance he may have at his commamd to resist the attack. Will you please let me hear from you, and oblige,

Very respectfully,

James A. Otterson."

(Mr. Otterson having the paper present produces it, and the same is offered in evidence by Mr. Mitchell, and marked "No. 38, April 28th, 1879. R .A. W.")

I also offer in evidence the letters patent granted to Elisha E. Everitt, No. 148,940; patent granted March 24th, 1874, being the patent in dispute.

(The letters patent offered in evidence and marked "No. 39, April 28th, 1879. R. A. W.")

I also offer in evidence the record of the circuit court of the United States for the Eastern District of Pennsylvania, of April Sessions, 1878, No. 82, docket No. 9, page 85, the case of Andrew Stark against the Hale & Kilburn Manufacturing Company.

I call for the production of the patent for the improvement issued to H. S. Hale, dated December 10th, 1878, mentioned by the plaintiff upon examination, upon page 62 of the testimony, and called for upon page 63.

I call upon the defendants to produce the written opinion given by Messrs. Harding and Collier on the validity of the plaintiff's patent, at or shortly after the time of the agreement between the plaintiff and defendants.

I call upon the defendants to produce the letters that they received from Asher B. Stevens, on the subject of this patent, during the months of February, March and April, 1878.

I inform Mr. Otterson, the defendant's counsel, that on Saturday next I will move the Court to allow an amendment of the bill to include a prayer for the assignment of Stark's patent to the plaintiff.

Adjourned until Monday next, May 5, 1879, at 1 P. M.

Philadelphia, Monday, May 5th, 1879.

Parties met at the office of the Master.

Present—Mr. Mitchell and Mr. Everitt.

On an account of an engagement of Mr. Otterson, adjourned until Tuesday, May 13th, 1879.

Philadelphia, Tuesday, May 13th, 1879.

Parties met at the office of the Master.

Present—The Master, Mr. Bowman, E. E. Everitt, Mr. Otterson, Mr. H. S. Hale.

The plaintiff's counsel calls upon the defendants for the various documents and papers referred to specifically in the calls made during the examination of the witnesses at the last meeting.

The defendant's counsel produce the letter of April 10th, 1878, from Mr. Mason to the Hale, Kilburn Manufacturing Company; the envelope not being produced, it having been destroyed.

(The letter offered in evidence by Mr. Bowman, and marked "No. 40, May 13th, 1879. C. A. H.")

Mr. Bowman: I now call for the contract between Andrew Stark and the defendants, referred to in the due bill in evidence.

Mr. Otterson: In reply to that I say there was no contract prior to the receipt referred to, unless the contract is expressed in the receipt. The contract is here. It is dated the 7th of March, 1878.

Mr. Bowman: Do I understand that this is the only contract between Andrew Stark and the defendants?

Mr. Otterson: I am so informed.

(The contract dated March 7th, 1878, offered in evidence by Mr. Bowman, and marked "No. 41, May 13th, 1879. C. A. H.")

Mr. Bowman: I now call for the production of the patents for the improvements issued to H. S. Hale, dated December 10th, 1878, mentioned by the plaintiff on examination, upon page 62 of the testimony, and called for upon page 63.

Mr. Otterson: The letters are here, but I produce them under protest. They are letters granting patents to Henry S. Hale, and one of date subsequent to the re-assignment to the Hale, Kilburn Manufacturing Company of the patent in dispute.

(The letters offered in evidence by plaintiff's counsel and marked "No. 42, May 13th, 1879. C. A. H.")

Mr. Bowman: I call for the production, by the defendants, of the written opinion given by Mr. Harding and Collier as to the validity of the plaintiff's patent, at or shortly after the time of the agreement between the plaintiff and defendants.

(Mr. Otterson declines to produce it.)

I also call upon the defendants to produce the letters they received from Asher P. Stevens, on the subject of this patent, during the months of February, March and April, 1878.

(Mr. Otterson declines to produce them.)

Mr. Bowman: There was a call made for an assignment mentioned in the receipt of May 11th, 1878.

Mr. Otterson: That is the paper you have just had.

Mr. Bowman: That is dated in March. We want the prior contract. We call for the contract and the assignment under the contract.

Mr. Otterson: We know nothing of any contract prior to the receipt just read from—May 8th, 1878---except this assignment of the patent which is dated March 7th, 1878.

Mr. Bowman: You had no contract prior to that date?

M. Otterson: No; none in writing, that I know of.

E. E. Everitt, re-re-examined.

By Mr. Bowman.

Q. In the seventh paragraph of the defendant's answer they aver that you were consulted and advised about the Stark patent, and were requested to enter into some arrangement to purchase or control the same. Please state whether the averment in that paragraph of the bill in that respect is true or not?

A. It is not; they never did until after the 10th day of May, 1878, ask me to co-operate in any shape, form or manner, and then it was for me to buy the whole of it myself, and turn it over to them—give 5 of my 7 per cent.

Q. Is there anything else you would like to explain?

A. When Mr. Howson, their agent, went to draw the contract between the two parties, they and me, he said that the patent would have to be re-issued, and for what reason? On the reason of the Maine's and the Stark patents, he said. I told them if it was really necessary, it should be re-issued, but I had to hear more about it before I would consent to it. But finally they made me consent, and put an article in that agreement, which you can all see, that it should be re-issued, and would have done so had not Mr. George Harding and the other patent attorney said it was not worth while.

Q. Then they did know about it?

A. Of course, they did, or they would never have had it inserted in that agreement; and the reason why I did not desire to have any patent re-issued was because I had had a patent re-issued, and sued a man for damages in the United States Court, and lost over $2,200, just through having the patent re-issued, and since I considered it valid, I did not want to have it bothered with.

Re-re-cross-examined.

By Mr. Otterson.

Q. Please state where, in your last answer, Mr. Kilburn's statement to you begins and where does it end?

A. In regard to the re-issue of the patents?

Q. You have said that Mr. Kilburn told you something or other, and upon that ground it went in evidence. I want to know what, of all that rigmarole, did Mr. Kilburn tell you?

A. I cannot tell you word for word, but that we signed the contract——

Q. Confine yourself to exactly what you have already said, and tell us what Mr. Kilburn told you.

A. I recollect his telling me about the Stark and Maine patents, and wanting me to have mine re-issued, and it continued along so for three or four or five months, and they had Messrs. Harding and Collier examine it, and give their opinions upon my patent, as to its validity.

Q. What did Mr. Kilburn tell you Mr. Howson said about the Stark and Maine patents?

A. Well he told that I would have to have my patent re-issued on account of them patents. He said Mr. Howson said so.

Q. Is that all?

A. That is about all I know of.

Q. When was that conversation between Mr. Kilburn and you?

A. It was between the 12th of April, 1874, and the first of September, as near as I can recollect.

Q. How do you fix those dates?

A. Just merely from memory. If I had the written opinions that we have here of Messrs. Harding and Collier I could tell the date exactly, because that was the end of it. After that there was never nothing said about it—that will fix it.

Q. In how many conversations between Mr. Kilburn and you did he repeat the substance of Mr. Howson's statement to you?

A. I suppose at least half a dozen,

Q. And extending through that time from April to September, 1874?

A. Extending from the 12th of April up to the time that

we had Mr. Harding make a thorough examination and give his written opinion in regard to its validity.

Q. I have called your attention expressly to the subject, because I expect to call Mr. Kilburn in reference to the same point; did you ever have any such conversation in the presence of any other person?

A. We might have had.

Q. Do you know whether you had or not?

A. I cannot say positively.

Q. Did you ever have any conversation on this subject with either of the three Mr. Hales?

A. I do not think I did; I might have had.

Mr. Bowman—If you want to make any explanation about any of your testimony of the re-cross-examination, you may make it.

The Witness—In making the original agreement both Mr. H. S. Hale and Mr. Curtis told me that any business I done with Mr. Kilburn would be satisfactory to all—the whole of the parties; that he would be the one that I would have to transact my business with, and the only one; so that whenever I had anything of any importance to do I done it with him, as he would have to be consulted finally anyhow before anything could be done.

By Mr. Otterson.

Q. You say you were never requested to participate in the purchase of the Maine and Stark patents until after they had been purchased by the Hale, Kilburn Manufacturing Company; is that so?

A. I never was until the 10th of May—between the 10th day of May and the 10th day of July, 1878—never till then, and then I was, but they wanted me to buy it all myself and turn it over to them—give five of my seven per cent. for Stark's patent, and turn it over to them. Mr. Kilburn told me if I would do that he would arrange the matter satisfactorily.

Q. Your attention is called expressly to the subject because I expect to call other witnesses to the same point; do

you say you never were consulted or asked to participate in the purchase of the outstanding patents?

A. Never asked to participate or co-operate with them in buying any patent until the 10th of May and after.

Mr. Bowman.

To the Master—In answer to several calls made by the plaintiff the defendants have produced several documents which have been offered in evidence by us; but I understand that they object to leaving them in your possession. I would ask that they be put with the other exhibits and the other papers in the case.

The Master—I do not think I have the power to compel them to leave them.

The plaintiff closes, reserving the right to call another witness at the next meeting.

Adjourned until Tuesday next, May 20, 1879, at 3 P. M.

Philadelphia, Tuesday, May 20, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt; Mr. Legrand Ensign representing Mr. Otterson, and Mr. H. S. Hale.

Mr. Bowman—We have closed our case.

DEFENDANT'S CASE.

Mr. Ensign—The defendants propose,

First—To show that the report submitted to the Master as having been made from their books by the plaintiff's expert is utterly unreliable, because it charges as sales, and makes the basis of a liability both the order-book and the sales-book entries, and for other reasons.

Second—To show that the account submitted by the defendants in answer to the plaintiff's call is correct.

O. D. Roberts called and examined.

By Mr. Ensign.

Witness produces memoranda.

Q. Have you examined the report you have presented?

A. I have examined part of it, as far as we have been able to go.

Q. Did you find it correct?

A. No, sir.

Q. In what respects is it incorrect; what are the discrepancies?

A. In many respects; it has many discrepancies.

Q. Please state them.

A. We have quite a list here of discrepancies.

By Mr. Bowman.

Q. What is the list taken from?

A. From the accounts of the plaintiffs.

Mr. Bowman—I would rather that the books be produced and the discrepancies pointed out from them. I object to the witness stating from the memorandum.

To Mr. Ensign—We have submitted an account which we contend is correct. I understand your position to be that it is not correct, and you propose to show wherein it is erroneous; the only legal way to do that is by turning to the books themselves, and pointing out the errors and mistakes.

Mr. Ensign—I was under the impression that the books were here, but I find that they are not.

Adjourned until Monday next, May 26, 1879. at 3 o'clock.

Philadelphia, Monday, May 26, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt.

On account of the absence of Mr. Otterson, adjourned until to-morrow (Tuesday), May 27, 1879, at 3 P. M.

Philadelphia, Tuesday, May 27, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

On account of the absence of Mr. Bowman, adjourned until Thursday next, May 29, 1879, at 11 A. M.

Philadelphia, Thursday, May 29th, 1879.

Parties met at the office of the Master.

Present: The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of Owen D. Roberts resumed by Mr. Otterson.

Q. I show you exhibit No. 5, being the report of the expert employed by plaintiff. Exhibit handed witness. Have you examined that report?

A. Part of it.

Q. Is it correct?

A. It is not.

Q. In what respect or respects is it incorrect?

A. In several. He claims on goods not part of the patent; he claims goods never delivered; he claims on goods returned; orders that are duplicated; amounts claimed above the list price; on goods sent to stock our branch stores; and in other respects.

Q. You say goods not delivered?

A. Yes, sir.

Q. Specify some, referring to the page of the report?

A. I find the first entry on page 1, of this report, for $40. The article charged there was never delivered to the customer.

Q. In which of your books does the entry occur to which that refers?

A. Order book L.

Q. It is only in the order book?

A. Yes, sir. Order-book L; page 456.

Q. Tell us what that order-book is?

A. A memorandum of orders given.

Q. And does it imply a sale or charge at all?

A. No, sir.

Q. Point out any other errors of the same kind?

A. In the report of the expert, page 3, they claim a patent folding crib, for $60.

Q. Where is that entered on your books?

A. On order-book K, page 630. That article was never delivered.

Q. Are there any others?

A. On page 6 of the report of the expert he makes a claim on one bed-stead and one child's bed-stead, amount, $155.

Q. Where is that entered on your books?

A. In order-book N, page 68. The goods were never delivered.

Q. What comes next?—Look at the same folio of the report?

A. One bed-stead, $82.50. The goods were never delivered.

Q. Where was the entry?

A. Page 631, order-book K, p. 3 of No. 5.

Q. What comes next?

A. On page 7 of his report one bed-stead, $50.; order-book N, page 114; the goods never delivered.

Q. Go on and give us a statement of those errors?

A. On the same page of his report they claim one bed-stead, $80., order-book N, page 146; goods never deliverd. On the same page of the report, another bed-stead, same order-book and same page, $70.; never delivered. On page 10 of his report they claim on one bed-stead $50.; order-book N, page 175: goods never delivered. On page 26 of his report, order-book N, page 590, they claim one bed-stead, $108.; goods never delivered. On page 26 of his report, they claim on one bed-stead $53.50, order-book N, page 529; goods never delivered.

Q. Are there others in the same condition?

A. I presume there are. That is as far as we have examined the report, up to first January, 1876.

Q. There one others still, are there not?

A. Yes, sir: but the order-books are not here.

Q. Can you tell what the order-book is?

A. Yes, sir; on page 21 of his report he claimed a bed-stead $115., order-book O, page 212; goods never delivered.

On page 24 of the report, order-book O, page 455, one bedstead, $113.; goods never delivered.

Q. And none of those order-books and entries imply a charge?

A. No, sir.

Q. Do you find entries of debit in that report for articles which had been delivered and were afterward returned?

A. I do.

Q. Will you specify a few of them?

A. Page 1, of his report, a claim on a folding bed-stead, 100., found in sales-book R, page 216. That bed was afterward returned to us.

Q. What is the entry of this return?

A. The entry is a credit entry in our journal D, page 399.

Q. What other entry have you on the same page of the report?

A. A folding bed-stead, $150., found in sales-book R, page 286; the bed-stead was afterwards returned.

Q. And credited?

A. Yes, sir; by an entry invoice-book D, page 207.

Q. Refer also to page 3, of the report?

A. One crib, $45., found in C. O. D. book, page 290. That was returned.

Q. How does it appear to have been returned?

A. By our usual mark, in leadpencil, "returned, C. O. D. book." On page 4 of the report is an item of $40.50 for one crib, charged on C. O. D. book, page 290, and the return of it entered on C. O. D. book, same page, by lead-pencil mark across the face of the copy of the bill. The same $40.50 is a duplicate of the same $45 that we have just spoken of before.

Also, on page 5, of the report, an item of $160, for one bed-stead, found in order-book M, page 131. This bed-stead was an exchange for a crib we delivered to this party and the difference between the two prices of the crib already delivered and this bedstead was $25, for which we have given the plaintiff credit in our own account. The ar-

rangement of the difference was made after the order in the order-book charging the $160, as the price of the order.

Q. Had you sold the crib?

A. Yes. sir.

Q. Does that appear in the report at all?

A. The crib, the parlor bed-stead, as appears in his report, is on page 2, of that report. $75. It appears in his report.

Mr. Bowman:—Is Mr. Roberts speaking from books, or from his recollection of these itemized instances? He is referring here to various transactions running through a considerable period of time, and I would like to know whether he is speaking from his memory, or from books and records in the possession of the defendants.

The witness:—In this particular instance I speak from my memory of the transaction.

Q. By Mr. Otterson: You were personally cognizant of it, were you?

A. Yes, sir; I was.

Q. Turn to page 8 of the report, the item of $80?

A. They claim on a single bed-stead, $80, charged in sales-book T, page 69: and the same was returned and credited in our journal E, page 29.

On page 9, of the report one crib is claimed, $57.50, entered in sales-book L, page 419; it was returned and credited in journal E, page 261.

On page 15 of the report we find one bed-stead, $140, charged in sales-book S, page 527; goods returned and credited in journal E, page 44.

On page 21 of the report one bed-stead, $55, charged in sales-book S, page 639; the goods returned and credited in invoice-book D, page 243.

On the same page of the report, one bed-stead, $140, sales-book S, page 668; bed-stead returned and credited in invoice-book D, page 243.

Page 26 of the report, one crib, $40, foreign order-book N, page 572; goods returned and credited in journal E, page 244.

Q. What about duplicates?

A. I find quite a number of duplicates; amount claimed on entries in the order-book on the same goods when charged.

Q. Illustrate, please?

A. On page 3 of the report of the expert you will find a bed-stead $150, found in order-book K, page 630, which is a duplicate of a bed-stead charged in sales-book S, page 32, which appears also on page 1, of his report.

Mr. Bowman:—I must object to this line of examination. I was in hopes it would not last long; but if the books show these facts I want them here so that the witness can refer to them in his examination, and point all of these errors.

Mr. Otterson:—The order-books with one or two exceptions are here, and all the other books but the journals. I gave directions to have them all here and supposed they were. Undoubtedly you have a right to have them here.

"To the witness." Do you say in your last answer that an entry from the order-book, first copied into the expert's report on page 3, from your sales-book, is copied in his report on page 1, and that all those entries refer to the same transaction?

A. Yes sir.

Q. On page 3, of the report is what?

A. One bed, stead, $100, foreign order-book K, 631, and there is a duplicate of the charge in the sales-book S, page 32, and entered into his report, page 1.

Q. Are there any more of that kind of entries?

A. Yes, sir; On page 3, of his report we find one bed-stead claimed at $110. Found in foreign order book, K page 631, which is a duplicate of a charge in sale-book S page 61, found in page 1, of his report.

In page 3, of his report there is an entry of one crib, $45, found in order-book K, page 631, which is a duplicate of one found in sales-book S, page 50; found on page 1, of his report.

In the same page of his report, page 3, is a crib, $55,

order-book K, page 631, which is a duplicate of an entry from sales-book S, page 69, found on page 2 of his report.

On the same page of his report, 1 crib, $66, order-book K, page 631, which is a duplicate of a charge found in sales-book S, page 32, found in page 1, of his report.

On page 5, of his report we find a claim on a bed-stead, $100, found in order-book N, page 48, which is a duplicate of a charge in sales-book S. page 132, which is also charged in his report, page 5, $110.

On page 5 of his report we find a bed-stead at $110, found in foreign order-book N, page 48, and on page 15 of his report we find an entry of the same bed, sales-book S, page 521, and entered there at $95.

On page 5, of his report, one bed-stead, $100, found in order-book N, page 61, which is a duplicate of a bed-stead on the same page of his report, page 5, charged in sales-book S, page 141.

On page 5, of his report, one bed-stead $85. Order-book N, page 61, which is a duplicate of an entry in his report, page 14, charged in sales-book S, page 496.

On page 6 of his report is a claim on a bed-stead, $85, found in order-book N, page 68, and the goods were not delivered.

Q. The next item is $70, on the same page?

A. My answer is the same as to the last sum. On page 6, of his report, a child's bed at $70, order book N, page 68; goods never delivered.

Q. Page 7, $75?

A. On page 7, of his report, a bed-stead at $75. Sales-book S, page 187, which is a duplicate of a bed-stead, page 6, of his report, $100, found in order-book N, page 99.

Page 10, of his report, order-book N, page 175, an entry of 2 beds, $95, each, and on page 12 of his report is a duplicate of one of those beds at $95, found in sales-book S, page 343 that is to be explained from the fact that one of those beds was shipped at a separate time, and consequently charged separately.

On page 11, of his report we find one bed stead, 120.50, found in order-book N, page 247, which is a duplicate of a bed-stead, $120.50, page 13, of his report, and found in sales-book S, 389.

Page 11, of his report 1 bed-stead, $80, found in order-book N, page 269, which is a duplicate of a bedstead, $80, on page 18, of his report, found in sales-book S, page 547.

Page 11, of the report one bed-stead, $100, foreign order-book N, 287, which is a duplicate of a bed-stead, $100, page 13, of his report, found in sales-book S, page 407.

Page 12, 1 crib $40, found in order-book M, page 487, the same bed being found on page 12, of his report, sales-book T, page 210.

On page 16, of his report 1 bed-stead, $105, found in order-book N, page 320, as also in his report, page 15, of the same amount, sales book S, 528.

Page 22, of his report, 1 bedstead $95, sales-book S, page 699, and the same bed on the same page, $95, found in order-book N, page 483.

Page 25, of the report, 1 bed-stead, $130, found in sales-book N. page 779, is the same bed as on page 23 of his report found in order-book N, page 516, for the same amount.

Page 25 of his report, 1 crib, $58.50 found in sales-book S, page 779, is the same crib, for $50, found on page 23 of his report, in order book N, page 516.

Page 26, of his report, 1 bed-stead, $45, found in order book N, page 592, the same bed being found on page 28 of his report charged in sales-book S, 866.

Page 28, of his report, one crib $40, sales-book S, 831, same crib found on page 26 of his report, $40 foreign order-book N, 572.

Page 28 of his report, 1 bed, $55, sales-book S, 845, same bed, $55, being 113; found on page 26 of his report, order-book N, page 573.

Page 28, of his report, 1 bed $65, sales-book S, 845, the same bed, $65, being found on page 26, of his report, order-book N, 567.

Q. In each quadruplicate of entries in the list just given is there one or more articles of merchandise referred to or covered?

A. There is the bedstead and spring, as far as I recollect; only the bedstead and the springs are mentioned.

Q. You have given your answers in reference to entries in groups of four, referring to the plaintiff's report, which contains two of each, and the defendants' books, to wit, order-book and sales-book, as containing two more entries. Do I understand that each group of four refers to one charge, or refers to separate charges, and if so to how many?

A. They refer, so far as his report is concerned, to two separate charges.

Q. But are they of different articles of merchandise?

A. They are the same articles of merchandise.

Q. Is it true then, or is it not true, that by the entries referred to, the expert has made duplicate charges of the same transaction in each instance?

A. It is true.

Q. Are there any charges in the report of matters which do not pertain to bedsteads?

A. There are.

Q. Will you point out some of them?

A. Yes sir. On page 2 of his report is a charge taken from order-book K, page 619, and is a charge of $5, for boxing a bedstead.

Q. Is that $5 charged anywhere else in the expense account, or anywhere?

A. It goes into what would be our petty cash-book.

Q. Go on?

A. On page 3 of the report is a charge from order-book K, 632, of $4, for boxing a bedstead. On page 6 of the report there is a charge for a flexible spring, $10, taken from order-book N, page 99.

Q. What do you mean by a flexible spring?

A. A flexible spring is a spring-bed.

Q. Peculiar to any particular form of bedsteads?

A. No sir; applied to any bedstead.

Q. Whether folding or otherwise?

A. Yes sir.

Q. It could be used on the floor, could it not, without any bedstead?

A. Yes sir; very nicely in the summer time.

Q. Have you any more such entries?

A. In his report, page 7, is a charge for a flexible spring and mattress, $20, found in order-book M, page 311.

Q. Is that the same kind of spring as referred to in your last answer?

A. Yes sir.

Q. What about the mattress: was the mattress peculiar to a folding-bed?

A. No sir.

Q. What was there peculiar about the mattress?

A. Nothing that I know of; an ordinary hair mattress.

Q. A mattress that could be used on any bedstead?

A. Yes sir.

Q. Or without any?

A. Yes sir.

Q. On page 8, of the report, there is $37; what is that for?

A. On page 8, of their report, we find a looking-glass and plate, $25; a flexible spring, $8; and a packing-box $4; making their charge of $37, which sum is found in sales-book S, page 228.

On the same page of their report is one flexible spring $10, found is sales-book T, page 40.

On the same page, No. 8, of the report, a flexible spring, $10; found in sales-book T, page 55.

On the same page of the report, one spring and mattress, $15; found in sales-book T, page 61.

Page 9 of the report, 1 set of springs, hinges, etc., for folding bedstead, $7.50; sales-book T, page 123, sold to Mr. E. E. Everitt, the plaintiff.

Q. How was that sold; what was the profit on that sale?

A. That I could not say positively. I should think it was

below cost, from the appearance of the charge. I do not know anything about it.

On the same page, 9, of their report, one flexible spring, $10; found in sales-book T, page 136.

On the same page we find a claim for 1 pine bed 4x4, planed, $30; the real charge was 1 pine board, quarter-inch, planed, 30 cents. C.O.D. book, page 410.

On the same page, 9, of the report, 1 flexible spring, $9; found in sales-book S, page 240.

On the same page of his report, 1 spring, $10, and 1 French plate mirror, $40; found in sales-book S, page 258.

Page 10, of the report, one flexible spring $10: found in foreign order-book N, 175.

On the same page, 2 flexible springs, $20; same order-book, same page.

On the same page of the report, 5 flexible springs at $10 each, $50; order-book N, page 175.

On the same page of the report, page 10, 2 flexible springs at $8.50 each, $17; foreign order-book N, page 175.

Page 11, of the report, 2 flexible springs, $20, order-book N, page 269.

Page 12, one flexible spring, $110: found in city order-book M, page 478.

Page 12 of the report, one flexible spring, $10: found in order-book M, page 581.

Page 12 of the report, one flexible spring, $10: found in sales-book T, page 249.

Adjourned until Monday, June 9th, 1879, at 1 P. M.

The meeting arranged for Monday, June 9th, 1879, was, by arrangement of counsel, continued until Monday, June 16th, 1879.

Philadelphia, Monday, June 16, 1879.

Parties met at the office of the Master:

Present:—The Master, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

On account of the absence of Mr. Bowman, adjourned until Monday next, June 23d, 1879, at 1 P.M.

Philadelphia, Monday, June 23d, 1879.

Parties met at the office of the master:

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of O. D. Roberts resumed.

By Mr. Otterson.

Q. Have you any more instances of goods which the plaintiff has charged for which were not delivered?

A. Yes sir; on page 6 of their report I find in order-book N, page 68, one bedstead, No. 3, No. 2 finish. This bedstead was not delivered. The price was $85.

On the same page of their report there is an item of $70 for one child's bedstead, No. 3, No. 2 finish. Not delivered.

Q. And both of them charged as debits upon the part of the plaintiff expert?

A. Yes sir. Then on page 10 of their report, I find one bedstead, No. 3, mirror, charged at $150, and a duplicate of the same is charged on page 9 of their report.

Q. That is, the same thing is charged twice?

A. Yes sir; On page 17 of their report, one bedstead, No. 1, veneered, charged at $140, is a duplicate of the same article charged on page 15 of their report, at the same rate.

On page 20 of their report I find one bedstead, No. 1, veneered, charged at $130, which is a duplicate of the same article charged on page 18 of their report.

On page 21 of their report I find one bedstead, No. 4, charged at $115, which is a duplicate of the same article charged on page 41 of their report at $85.

On page 22, of their report, I find one crib, No. 3, veneered, charged at $50, which is a duplicate of the same article charged on page 2 of their report.

On the same page of their report I find one bedstead, No. 7, veneered, charged at $210, which is a duplicate of the same bedstead charged on the same page of their report.

Page 37 of their report, one crib, No. 1, veneered, charged at $88.50, which is a duplicate of the same article charged on page 41 of their report.

On the same page of their report I find one bedstead, No. 7, veneered, charged at $27, which is a duplicate of the same article charged on page 34 of their report at $20.50.

On page 34 of their report, I find one bedstead, No. 10 three quarter size, charged at $45, which is a duplicate of the same article charged on the same page of their account same amount.

Q. Do you find any articles charged in their account above the list prices?

A. Yes sir.

Q. Will you turn to some of them?

A. Yes sir. On page 1 of their report I find a crib charged at $66, which should have been $60, being $6 above the list price.

Q. Can you tell us what that is charged in your book?

A. It is charged at $60.

On the same page of their report I find one bedstead charged at $110., which should have been $100.

On the same page I find a charge for a patent crib, No. 3, at $50, which should have been $45.

On the same page of their report one patent crib charged at $50, which should have been at $45. On page 2 of their report a bedstead charged at $60, which should have been $55.

On page 5 of their report, one bedstead, No. 3, charged at $110, which should have been $100.

On the same page of their report one bedstead, No. 3, charged at $110, which should have been $100.

On page 7 of their report one bedstead, No. 3, three-quarters, charged at $100, which should have been $85.

On the same page of their report one bedstead, No. 3, charged at $110, which should have been $100.

On the same page of their report one bedstead charged at $100, which should have been $95.

On the same page of their report one crib charged at $60, which should have been $57.50.

On the same page of their report one single bedstead, charged at $45, which should have been $35.

Page 8 of their report, one bedstead, No. 3, No. 2 finish, charged at $75, which should have been $65.

On the same page of their report one bedstead, No. 3, charged at $100, which should have been $85.

Page 9 of their report, one bedstead, No. 3 finish, with mirror, has $25 included for the mirror in their charge.

Q. Explain the $25 for the mirror; was the bedstead finished, with $25 for the mirror?

A. No sir; $25 was the list price we charged for the mirror, and is not a part of the bed at all.

On the same page of their report one bedstead, charged at $95, should have been $85.

On page 10 of their report one bedstead charged at $160, should have been $150.

On the same page of their report one bedstead charged at $100, should have been $95.

On the same page of their report one bedstead charged at $100, should have been $95.

On page 12 of their report one bedstead charged at $75, should have been $70.

On the same page of their report one bedstead charged at $95, should have been $85.

On the same page of their report one bedstead charged at $155, should have been $140.

On page 13 of their report one bedstead charged at $150, should have been $140.

On the same page of their report one bedstead charged at $65, should have been $55.

On the same page of their report one bedstead charged at $216, should have been $210.

On the same page of their report one bedstead charged at $100, should have been $90.

On the same page of their report one bedstead charged at $90, should have been $80.

On the same page of their report one bedstead charged at $250, should have been $240.

On the same page of their report one bedstead charged at $150, should have been $95.

On page 14 of their report one bedstead charged at $95, should have been $85.

On the same page of their report one crib charged at $42.50, should have been $40.

On page 15 of their report one bedstead charged at $107, should have been $95.

On the same page of their report one bedstead charged at $80.50, should have been $80.

On page 16 of their report one crib charged at $77, should have been $75.

On the same page of their report one bedstead charged at $92.50, should have been $90.

On the same page of their report one bedstead charged at $75, should have been $70.

On the same page of their report one bedstead charged at $75, should have been $70.

On page 18 of their report one bedstead charged at $145, should have been $140.

On page 21 of their report one bedstead charged at $65, should have been $55.

On page 23 of their report one crib charged at $58, should have been $57.50.

On page 25 of their report one bedstead charged at $78, should have been $70.

On the same page of their report one bedstead charged at $62, should have been $55.

On page 26 of their report one bedstead charged at $90, should have been $80.

On page 28 of their report one bedstead charged at $135, should have been $130.

On page 29 of their report one bedstead charged at $50, should have been $45.

On the same page of their report one bedstead charged at $54.40, should have been $53,

On page 32 of their report one bedstead charged at $70, should have been $65.

On the same page of their report one bedstead charged at $50, should have been $45.

On the same page of their report one bedstead charged at $92.25. should have been $90.

On the same page of their report one bedstead charged at $67. should have been $65.

On page 35 of their report one bedstead charged at $40, should have been $33.

On the same page of their report one bedstead charged at $250, should have been $240.

On page 36 of their report one bedstead charged at $100, should have been $95.

On the same page of their report one bedstead charged at $70, should have been $65.

On the same page of their report one crib charged at $59 should have been $57.50.

On the same page of their report one bedstead charged at $85, should have been $75.

On the same page of their report one crib charged at $60. should have been $57.50.

On the same page of their report one bedstead charged at $60, should have been $55.

On page 37 of their report one bedstead charged at $48 should have been $43.

Q. Can you account for these discrepancies?

A. As to how they got the higher figures?

Q. Yes sir.

A. No sir.

Q. Do not the higher figures appear in your books?

A. I cannot say, because I have not looked at every one of their items to see if they agree with ours. I only looked to see if they agreed with our correct prices in these matters.

Q. But you know that the sales were at the lower prices that you have given, do you?

A. I do.

Q. How do you account for these discrepancies; you have said that Mr. Hoffman has higher figures in his report than the articles sold for?

A. In many instances the mattresses and springs and other articles were charged in a lump price, and in making

the reductions on these mattresses and other articles he has not made enough allowance for those articles to get at the correct price of the bedstead.

Q. Did he deduct for the mattresses and springs and other articles at all?

A. He deducted for the mattresses in most cases.

Q. I want you to be sure on that subject, because I understand the plaintiff to be claiming here for mattresses and springs as if they were a part of the bedstead?

A. He claims for springs under all circumstances, but not for mattresses under all circumstances.

Q. And it is by calculating such other matters that he gets the prices too high?

A. Yes sir.

Q. Are there other charges in that report as if for goods sold, of which your books represent only the transfer of goods from one store to another or branch store?

A. Yes sir. I find in their report that all goods that are consigned to our branch stores on sale, are charged in their report as goods sold.

Q. How do those goods which are sold by the branch stores actually get on your books?

A. The goods sold from the stock furnished our branch stores are returned to us by weekly return sales.

Q. How do they get on your books?

A. They are already in memorandum by the bills we send them. We keep with these accounts a merchandise consignment account, and when these goods are returned as sold they are transferred by journal entry in their total to the regular merchandise account on our ledger.

Q. I do not quite get the idea; when you ship the goods to the branch stores you charge them on the books?

A. Yes sir.

Q. Do they at any time properly represent sales?

A. Those charges? No sir.

Q. Have you illustrations of such charges in this report which appear to represent sales, but are actual debits to the report?

A. Yes sir.

Q. Specify them?

A. We find on page 14 of their report, charges of goods sent to the New York store, on sale, amounting to $415; on the same page, sent to the same store, $345; on the same page, to the same store, $395.

On page 15 of their report, to the same store, $579.50; same page, $40.

On page 18, to the same store, $78.50; $150, and $205.

On page 19 of their report, to the same store, $522; $520, and 525.

On page 20 of their report, to the same store, $635.50.

On page 21 of their report, to the same store, $510.

On page 22 of their report, to the same store, $115.

On page 23 of their report, to the same store, $210.

On page 25 of their report, to the same store, $103.50; on the same page, $58.50.

On page 28 of their report, to the same store, $417.50; on the same page, $80; and on the same page, $601.

On page 29 of their report, to the same store, $286.

On page 31 of their report, to the same store, $1890.

On page 33 of their report, to the same store, $632.

On page 34 of their report, to the same store, $628.50; to the same store, $41; to the same store, $255; and to the same store, $133.50.

On page 37 of their report, to the same store, $348.50; to the same store, $380; to the same store, $159.50; to the same store, $190; and to the same store, $141.

Q. Have you examined the returns, account-sale, from that store to see how many of those goods were actually sold subsequently, and at what rates?

A. No sir; I have not.

Q. But the entries referred to do not represent sales, in any sense of the word?

A. No sir.

Q. Down to what period of time was this examination made?

A. Down to the first of January, 1876.

Q. From the examinations you have made can you say what is your opinion as to that report as a reliable basis for calculation between these parties?

A. I believe it is not reliable at all.

Adjourned until Monday next, June, 30, 1879, at 1 P.M.

Philadelphia, Monday, June 30, 1879.

Parties met at the office of the Master.

Present.—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of Owen D. Roberts resumed.

By Mr. Otterson.

Q. Have you examined the statements marked by the examiner exhibits 1, 2, and 3, being the account of the plaintiff furnished by the defendants under call—have you examined those accounts?

A. I have examined them.

Q. Do you know who made those accounts?

A. Mr. H. S. Hale made those accounts.

Q. He was treasurer of the defendant's corporation was he not?

A. Yes sir.

Q. You have compared them with your books which are in evidence here, have you?

A. Yes sir.

Q. Are they correct, or otherwise?

A. They are correct, with the exceptions noted on the last leaf of exhibit 1, which is as follows:

S. B. S. 53 Moses, 1 bedstead $110. Less 10, 10 and 5 per cent.,	$84.65
C. O. D. book, Hoops, 1 bedstead, $72. Less 10, 10 and 5 per cent.,	55.40
S. B. S. 228, Penna. R. R., 1 bedstead, ash, to order, $88. Less 15 and 10 per cent.,	67.32
Amount carried forward,	$207.37

Amount brought forward,	$207.37
S. B. T. 230, Taylor & Smith, 1 bedstead, ash, 3, $80. Less 15 and 10 per cent.,	61.20
S. B. S. 581, Moses, 1 bedstead, o, $55. Less 10, 10 and 10 per cent.,	40.10
S. B. T. 623, McCarthy, 1 crib, 3, veneered, $50. Less 10, 10 and 10 per cent.,	36.45
S. B. T. 821, Lippencott side rails and improvements, $14. Less 10, 10 and 10 per cent.,	10.21
S. B. T. 871, Gregory, 1 bedstead, o, $55. Less 10, 10 and 10 per cent.,	40.10
S. B. S. 876, J. Jones & Son, 1 bedstead, o, $55. Less 10, 10 and 10 per cent.,	40.10
O. B. O. 570, Barnes, paid, 1 bedstead, ¾, $45. Less 10, 10 and 10 per cent.,	32.80
O. B. O. 153, Cheney, paid, 1 bedstead, 3 veneered, $95. Less 10, 10 and 10 per cent.,	69.25
S. B. T. 78, De Coursey, exchange on bed, $15. Less 15 and 10 per cent.,	11.47
O. B. M. 601, Cox, paid, 1 crib, veneered, 3, $50. Less 10, 10 and 10 per cent.,	36.45
O. B. O. 16, Jenks, paid, 1 bed, ¾ pln, $70. Less 10, 10 and 10 per cent.,	51.03
S. B. B. 189, Dobbins, 1 crib, ¾, veneered, $57.50. Less 10, 10 and 10 per cent.,	41.91
	678.44
Seven per cent. royalty.	$47.49
New York store, 1 Centennial bedstead, $355. Less ⅓ 118, 237 per cent.,	16.59
	64.08

Q. What do you mean by these exceptions?

A. I mean that these accounts which we put here are accounts of beds sold that in making the accounts were accidentally overlooked, and were not included in the first account.

Q. Or not in any account rendered to the plaintiff?

A. Yes sir.

Q. What does this exhibit No. 1 represent?

A. Exhibit No. 1 represents the account of the bedsteads on which the defendants allow royalty, the sales, and shows the number and price of the bedsteads sold, and the amount of royalty due Mr. Everitt, month by month.

Q. But does not show the payments that have been made whether monthly or otherwise on that account?

A. No sir.

Q. What does No. 2 show?

A. No. 2 shows the account of the bedsteads, Nos. 10 and 11, that have been made and sold, with the net price, and 7 per cent. royalty.

Q. As contained in your books?

A. Yes sir.

Q. What are the bedsteads No. 10 11?

A. Bedsteads No. 10 11 are bedsteads with a different arrangement, I believe, so far as I understand the patent of Mr. Everitt, with considerable difference between his patent and the patent under which these beds are claimed to have been made.

Q. Has royalty been paid on those bedsteads to Mr. Everitt?

A. Yes sir.

Q. And does that account represent it?

A. Yes sir.

Q. Was it correct to pay that royalty or not?

A. I am not able to say from my own knowledge.

Q. Do you know under what patent those bedsteads were made?

A. I believe they fall under the Stark and Maine patent.

Q. Does this account show what royalty was paid upon those bedsteads?

A. No sir; it does not show the exact amount that has been paid.

Q. What does No. 3 represent?

A. Exhibit No. 3 represents the bedstead No. 11 made and sold—also under the Stark and Maine patent.

Q. What is the difference between that account and No. 2?

A. No. 2 shows different styles of the bedstead. The bedsteads are the same but the styles are different.

Q. Do you mean to say that in the different accounts the styles of No. 11 are different, or that there is a difference between No. 10 and 11?

A. No; between No. 10 and 11.

Q. What does the account No. 3 represent?

A. That is the only answer I can give? that this account represents the bedsteads No. 10 and 18.

Q. From any particular time?

A. Commencing April, 1878.

Q. And follows in the point of date immediately after No. 2, does it?

A. Yes sir.

Q. And you cannot tell, you say, without access to the books, how much royalty has been paid altogether?

A. No sir; I cannot.

Adjourned until Monday next, July 7, 1879, at 1 p. m.

Philadelphia, July 7th. 1879.

Parties met at the office of the Master.

Present: Mr. Bowman, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

Examination of O. D. Roberts resumed, by Mr. Otterson.

Q. Can you state what payments have been made to Mr. Everitt on account of royalty?

A. Yes sir; referring to statement: This statement shows the amount of royalty paid Mr. Everitt from time to time, from September 4, 1874, up to April 1st, 1878, and also the royalties still due him up to November 1st, 1878. We have the receipts in the receipt book to correspond with the total of the payments.

Mr. Otterson:—I offer the statement, which the witness has been reading from, in evidence.

Mr. Bowman:—I object to it: I do not know what it is.

If it purports to be a copy from some original, I call for the production of the orginal.

Mr. Otterson:—The statement was submitted as a matter of convenience, and for the purpose of saving time. It is now withdrawn, and we won't proceed with the receipts which the statement refers to.

By Mr. Otterson:

Q. Receipt book handed witness, and he is referred to a receipt. What is that?

A. A receipt of November 14, 1874.

Q. For how much?

A. $37.59.

Q. Turn to December 2d.

A. December 2d is a receipt for $50.23, signed E. E. Everitt.

Q. January 6th, 1875?

A. January 6th, 1875 is a receipt for $59.98, signed E. E. Everitt.

Q. February 1st?

A. February 1st is a receipt for $20, signed E. E. Everitt.

Q. February 8th?

A. February 8th, a receipt for $24.71.

Q. March 4th?

A. March 4th, a receipt for $50: signed E. E. Everitt.

Q. March 10th?

A. March 10th, a receipt for $20, signed E. E. Everitt.

Q. April 7th?

A. $95.55—April 10th, that should be.

Q. The next is $118.49; what is the date of that?

A. May 10th; $104.71; E. E. Everitt. As I said in my evidence, the receipts in the book do not agree with the totals, for the reason that there were counter-charges of merchandise, etc., which would be deducted from this royalty, and a receipt taken for the balance.

Q. Then those figures do not show the amount of royalty actually paid?

A. Not the actual amount of money paid—I say they do

not show the actual amount of money paid; they show the actual amount of royalty but not the actual amount of money paid, because there were counter-charges.

Q. The balance of that would be merchandise charges?

A. Yes sir; would be a charge of some kind; it would leave this difference of $104.74, and that occurred in very many cases all through our transactions.

Q. Turn to the charges in these particular cases?

A. I do not know that I can now, without having the general ledger of the house. It is not here and we have not used it in our evidence at all.

Q. But the difference between $104.71 and $118.49 was merchandise.

A. Yes sir;—or let me add to that. some counter-charge; I am not positive it was merchandise in each case.

Q. What is the next one?

A. The next receipt is June 3rd, a receipt for $25, signed E. E. Everitt.

Q. The next?

A. June 10th, $68.86; signed E. E. Everitt.

Q. The next?

A. July 10th; a receipt for $47.12.

Q. The difference for merchandise?

A. Yes sir; —$15.57, it would be if the difference was charged against him.

Q. July account?

A. August 20th; receipt for $19.14; signed E. E. Everitt.

Q. August account?

A. September 10th; $72.46; E. E. Everitt.

Q. September account?

A. October 14th; a receipt for $212.03; signed E. E. Everitt.

Q. October account; is it marked here in pencil, 'omitted'?

A. November 15; $118.49; signed E. E. Everitt.

Q. November account?

A. December 22d; $158.93, signed E. E. Everitt.

Q. December account?
A. January 10th, 1876; $160.85.
Q. January account?
A. February 29th; $69.53; signed E. E. Everitt.
Q. February account?
A. $50; March 14th; signed, E. E. Everitt; March 27th, $82.74; signed E. E. Everitt.
Q. March account?
A. April 10th; $211.62; signed E. E. Everitt.
Q. April account?
A. May 24th; $183.07; signed E. E. Everitt.
Q. May account?
A. June 20th; 196.47; signed E. E. Everitt.
Q. June account?
A. August 11th; $170.91; signed E. E. Everitt.
Q. July?
A. August 11th; $112.17 for July royalty.
Q. Go on without my questioning you?
A. September $118.54, signed E. E. Everitt.

October 10th $120 " "
October 11th $353.64 " "
October 11th $146.09 " "
October 18th $30 " "
November 9th; $120 " "
November 10th; $221.31 "
December 19th; $226.05 "
January 13th; 1877 $131.60 "
February 10th; $57.05 "
March 10th, $99.21 " "
April 10th; $62.06 " "
May 14th; $152.40 " "
May 11th; $25; " "
June 2nd; $25; " "
June 12th; $118.87; " "
July 10th; $114.65; " "
October 16th; $618.51 "
November 10th; $324.35 "
December 10th; $214.78 "

A. January 10th; '78 $161.80 signed, E. E. Everitt.
February 11th; $96.74 " "
March 11th; $85.68 " "
April 10th; $70 " "
April 12th; $116.29 " "

Q. Will you state how you got upon your books from the account sales rendered from the branch stores, the merchandise which is contained in consignment accounts which have been referred to?

A. With our branch of stores we keep a merchandise consignment account, and all goods sent for sale at those stores were charged to that account. At the end of each month from the weekly returns from the different branch stores, we obtain an account of the goods that were actually sold at those stores, and, by a journal entry, transferred the actual sales from the merchandise consignment account to our regular merchandise sales account.

Q. In the report of Mr. Hoffman, is any notice taken of those merchandise sales?

A. There is not.

Cross-Examined.

By Mr. Bowman.

Q. You are the chief book-keeper for the defendants, are you not?

A. I am.

Q. And for how long have you been in their service?

A. Nearly eleven years.

Q. Have you given us all of the corrections in their accounts with Mr. Everitt—you speak of the account of Mr. Everitt—the account which his book-keeper furnishes—being incorrect; I want to know whether you have pointed out all of the errors, and whether you want us to accept the explanation as being correct?

A. All up to January 1st, 1876.

Q. Have you personally made up any account showing the indebtedness of the defendants to Mr. Everitt?

A. Done the actual work, do you mean?

Q. Yes sir.

A. No sir.

Q. Then you are unable to state of your own knowledge how much the defendants owe him for royalty?

A. No sir; my knowledge comes from the books; I am able to state the amount from the accounts I have shown in the books of the house.

Q. Have you examined the books yourself?

A. Yes sir; I have.

Q. Will you state who made up the account showing the defendants' indebtedness to Mr. Everitt?

A. The monthly account I rendered to him.

Q. The one which has been furnished in this investigation, I mean.

A. Mr. Hale made up the account.

Q. Is he one of the firm?

A. Yes sir; he is the treasurer of the company.

Q. Has he anything to do with keeping the books?

A. He has the superintendency of the office work; general superintendency.

Q. But has nothing to do with the book-keeping?

A. No sir.

Q. In your examination-in-chief, you stated that Mr. Everitt claims on goods not part of his patent; will you be kind enough to state what goods they are?

A. I would mention flexible springs, mattresses, mirrors; that is all I call to mind just now.

Q. Have you ever read his patent and improvements?

A. I think I have.

Q. Do you claim to be an expert on patents?

A. I do not.

Q. Then when you speak of his claiming goods not part of his patent, that is simply your opinion?

A. Yes, sir; my general understanding.

Q. Your opinion and general understanding of patents?

A. Yes sir.

Q. But you would not pretend to say what his patent covers, nor whether you are correct in that or not?

A. I would not.

Q. Do you know, as point of fact, that Mr. Everitt always claimed he was entitled to royalty upon the very articles which you have mentioned?

A. No sir; I do not know that he always claimed it.

Q. Except the mattress?

A. I do not make any exceptions.

Q. You do not know whether he claimed or not?

A. I say I do know; that my understanding was that he did not claim for those.

Q. Do you remember the model which Mr. Everitt furnished the defendants at the time he made the agreement with them as to his royalty?

A. I do not.

Q. Do you remember seeing it?

A. I do not.

Q. Do you remember the large bed which he made and furnished as a pattern of his patent?

A. I can't say that I do.

Q. Did you never see it?

A. I cannot say positively.

Q. You say that he claims for goods never delivered; can you give me the amount of royality which he claims on goods never delivered, from the books of the defendants?

A. That amount is made up from the report presented by Mr. Everitt, and I have shown in my examination the goods which he claimed on, which have never been delivered.

Q. You spoke of one article—the first one mentioned—for $40, never delivered to the customers?

A. Yes sir.

Q. Have you any personal knowledge of that article?

A. No sir; I have not.

Q. Will you state how you know that article was never delivered?

A. For the reason that on the order-book there is not

the usual mark of delivery; there was never any charge in our book for that article.

Q. Then you say it was never delivered because there is no mark on the order book showing its delivery?

A. There is not the usual mark of delivery—no charge on the book for that article.

Q. What do you mean—a credit charge?

A. No sir; a debit charge.

Q. If it had been a cash sale where would your entry be?

A. Our entry would have been a mark of "paid" on the order, and the cash would have been entered in the petty cash-book.

Q. Who usually makes the mark you speak of, which indicates the delivery of an article?

A. The city clerk, if a city order; myself, if an out-of-town order.

Q. Did you ever know him to miss any?

A. No sir; I did not.

Q. Never did?

A. No sir.

Q. Have you order book "L" here?

A. Yes sir. (Book produced.)

Q. Refer to page 456; which is this item of $40?

A. (Indicating the item.) "One folding crib."

Q. This is the order book, is it?

A. Yes sir; this is the order book.

Q. Will you point to the usual mark indicating the delivery of an article?

A. (Witness does so.) It is a cross, straight up and down; and that (referring to another mark,) is our usual mark of countermanding an order.

Q. Do you know who made the cross opposite this particular entry?

A. I could not give the name of the party, I know the

name of the clerk who was in charge of the book at that time, and I presume it was he.

Q. What does that mark mean (indicating mark in book)?

A. Delivery.

Q. And that (indicating)?

A. Delivery.

Q. Both of them?

A. Yes sir.

Q. I want you to state the books in which any entries would be made of sales of the Everitt bedstead. You have got your order books here; I want you to state the books into which any entries have been made in that establishment of the sales of Mr. Everitt's bedstead?

A. First comes the order book, then the sales book. If payment was made at the time the order was given, the cash entry would be in the petty cash-book, and not go any further than the order book; if the bill was to be charged, it would go from the order book to the sales book, from there to the journal, from the journal to the ledger. Cash payments for bills charged would be entered in the cash book, and from there taken to the ledger. I have now mentioned all.

Q. You are speaking of the ordinary business here in the store in Philadelphia?

A. Yes sir.

Q. What course would they take in sending them to your branch establishment?

A. The order would first be entered in the book which is called the order book of the branch stores, and from there charged to whatever store they were sent to, and the bill copied in our regular sales book. This charge would be transferred to the journal under the head of merchandise consignment account, and from there to the regular store account in the ledger.

Q. Have you order book "K" here?

A. Yes sir. (Book produced.)

Q. In order book "K," page 631, in your examination-in-chief, you referred to an order for $155?

A. Yes sir.

Q. You stated also, in your examination-in-chief, that those goods were never delivered?

A. Yes sir.

Q. Will you state why you are able to say they were never delivered?

A. For the simple reason that the usual mark of delivery is not made on the order book, and there was no charge of that article in our books.

Q. Do you know who made that cross indicating no delivery?

A. I do.

Q. Please state.

A. There is no mark there indicating no delivery; there is the absence of the cross.

Q. The absence of the cross means no delivery? I understood you to say that a certain cross indicated delivery, and a certain other cross indicated no delivery.

A. I said the absence of the usual mark of delivery indicates no delivery.

Q. What does this mark mean opposite the first entry?

A. That is the mark of delivery, and billed.

Q. Then where goods were not delivered you made no mark at all?

A. No mark at all.

Q. Can you state why those goods were not delivered?

A. I cannot.

Q. Is not that a mark of delivery opposite the second article—the second entry?

A. I think not.

Q. Is it not a cross, just such as you stated indicates a delivery of goods?

A. It is a very faint cross, and, to a man acquainted with

this book, would show that it was an error on the part of the clerk, getting on the wrong line.

Q. You have no personal recollection about it, have you?

A. I have not.

Q. You cannot say positively whether the mark is there erroneously, or not?

A. I cannot.

Q. Then it may mean a delivery and it may not, you are not positive?

A. No sir.

Q. Then it may mean a delivery, and it may not?

A. To me it may not mean anything but a mistake.

Q. To you it may not mean anything but a mistake?

A. Yes sir.

Q. Yet you would not like to swear that it is a mistake?

A. No, sir; because I have no positive knowledge on the subject.

Q. Taking the other articles in that entry, are you able to say that none of those articles were delivered?

A. I am.

Q. Do you base your answer upon the fact that no cross is made opposite to them?

A. That is one reason, and the other is that I have personally examined these entries and find no charges whatever.

Q. In the books?

A. In the books.

Adjourned until Wednesday, July 9th, 1879, at 11 A. M.

The meeting arranged for Wednesday, July 9th, 1879, was, on account of sickness in the family of Mr. Bowman, adjourned until to-morrow, at 11 A. M.

Philadelphia, Thursday, July 10th, 1879.

Parties met at the office of the Master.

Present:—Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Cross-examination of Owen D. Roberts resumed.

By Mr. Bowman.

Q. In your cross-examination, at your last meeting, you spoke of using different marks in your books to indicate the the delivery and otherwise of the goods. I would like you to explain the different marks used in keeping the books of the defendants, and what they indicate?

A. I think I explained that the mark of delivery was a simple straight cross, made in the folio column of the order book, and the mark we used to indicate that an order was countermanded, was a cross with a line running from the corner of the square between the columns in the shape of an x.

Q. Are those the only two marks used in keeping the books to indicate the delivery, or the countermanding of the orders of the goods?

A. Yes sir; those are the only two marks.

Q. What indicates no delivery of goods?

A. The absence of any mark at all. That would be the indication of the order book.

Q. And these marks were only made on your order books?

A. Yes sir.

Q. Were they made by any particular person?

A. Usually by the clerks having charge of the different order books.

Q. And you would rely on their accuracy in making them?

A. Yes sir.

Q. Who adopted this system of making those marks?

A. I did.

Q. Did you ever know them to be used in any other system of book-keeping in any other establishment?

A. No sir; I never saw them until I used them myself.

Q. In examining the accounts furnished by Mr. Everitt's expert, you referred to the order-books to ascertain whether the goods charged in his account had been delivered or not?

A. Yes sir.

Q. Where you saw no marks you took it for granted the goods had never been delivered?

A. Yes sir.

Q. And where you saw the marks indicating delivery, you took it for granted the goods had been delivered?

A. Yes sir.

Q. And where you saw the marks indicating that the orders had been countermanded you took them for granted?

A. Yes sir.

Q. Did you refer, in any instance, to the cash-book, to see whether any of those goods so marked or indicated as not being delivered had subsequently been delivered and the cash received by the defendants?

A. In all doubtful cases we used every book.

Q. I mean in your examination of the expert's account?

A. Exactly; in all doubtful cases we examined every book, to be certain that the article was or was not delivered.

Q. You only did that in cases where you had doubts?

A. Yes sir.

Q. You could not carry all these items and transactions in your mind; by referring to the order-book could you tell positively whether the cash for the goods mentioned there had been received or not, without referring to your cash-book or your ledger?

A. No sir; we could not; and in all such cases where

the goods were not marked, as I said before, we looked at all the books that would be apt to show whether the goods had been delivered or not.

Q. In examining the account furnished by Mr. Everitt, what period of time did you cover?

A. From the beginning of the transactions with Mr. Everitt up to the first of January, 1876.

Q. And you stopped with January, 1876?

A. Yes sir.

Q. During that period who furnished the monthly statement to Mr. Everitt?

A. You mean the party; by whom?

Q. Yes sir.

A. One of the clerks in our office, I think Mr. John Dimmock, during that period made up the account.

Q. Did he make up the statements?

A. I do not know that there were any statements rendered during that time. He made up the account of bedsteads sold, that was furnished Mr. Everitt.

Q. He was one of the book-keepers, was he not?

A. Yes sir; he was assistant book-keeper at that time.

Q. Under whose direction did he make up this account?

A. My own.

Q. And where did he get his figures from?

A. From the general books of the concern.

Q. Did Mr. Everitt have access to those books?

A. He could have had it any time.

Q. In making up those statements will you give us an idea how they were made—did you lump them or itemize them?

A. Itemized them—every bed that was sold.

Q. What prices did you put in, wholesale or retail prices?

A. We put in the net wholesale price.

Q. Will you explain what you mean by the net wholesale price?

A. Yes sir. We had what we called a list price; from this list price there were given certain discounts through the furniture trade. In getting the net wholesale price we deducted the discounts allowed to the trade, and then from the net price thus obtained figured Mr. Everitt's royalty at the given percentage.

Q. What discounts did you allow to the trade? ten per cent. or more?

A. Different discounts at different times. Sometimes 15 and 10; at one time 10, 10 and 5; at another time 20 and 5; at another time one-third, or 33 and one-third per cent.

Q. What would regulate the rate of discount?

A. Our arrangement with the trade.

Q. That is, the defendants would make any discounts they pleased with the trade?

A. Yes sir.

Q. And whatever discounts they made you deducted, and then from that net sum allowed Mr. Everitt the royalty?

A. Yes sir.

Q. From whom would you get the rate of discount?

A. From the heads of the firm, in the first place.

Q. Would the entries in the books of account show the discounts you had allowed the trade?

A. Yes sir.

Q. Supposing you would sell the trade a bedstead $150, what entry would you make upon your books of the price as to figures?

A. Do you mean the sales-books?

Q. Yes sir.

A. The entry would be the party—to whoever it was furnished—to the firm, for one bedstead, of whatever style, and numbered so much, list price $150, less whatever the dis-

count that might be prevailing at that time. That would leave a sum, subject to a cash discount, changing at different times, and if that bill was paid within a certain limited time they would be allowed the cash discount; if not paid within that time, they would have to pay the bill net, as it stood, with the discount off, as I mentioned in the first place.

Q. And that would appear on the sales-book?

A. That would appear on the sales-book.

Q. And that would be in a sale where you gave credit?

A. Yes sir.

Q. How would the figures appear in a cash transaction?

A. The figures would appear at the perfectly net figures on the merchandise cash-book—the petty cash-book as we call it in our business.

Q. Would they not appear on the order-book?

A. The net figures? No sir.

Q. What figures would appear on the order-book?

A. The gross or list price.

Q. Were the discount rates generally published in the circulars and advertisements of the firm?

A. No sir.

Q. Were they published at all?

A. Yes sir.

Q. Is that one of them? (Exhibit No. 9 shown witness.)

A. That is.

Q. Is not the rate of discount published there?

A. This is one rate of discount.

Q. Of your own knowledge did you ever know that rate of discount mentioned on that circular to be had?

A. Yes sir.

Q. In making up your statements for Mr. Everitt did you, in any instances, only deduct the discount of 10 per cent.?

Mr. Otterson. I object to that, because the statements are in existence and in writing.

Mr. Bowman. I call for the production of those statements. I am referring to the statements made up by the clerks, back previous to 1876.

Q. Will you explain to me the difference between a statement and an account?

A. According to the understanding of a statement here, rendered to Mr. Everitt, it has been a copy of the account we made and preserved at the office. That has been the understanding of the statements rendered Mr. Everitt.

Q. That is your understanding?

A. It is my understanding. Of course I do not know how other people understand it.

Q. Were not these accounts which you say you furnished him up to January, 1876, statements of the goods which you sold under his patent and improvement?

A. Yes sir.

Q. My question is: In making those statements, did you ever allow him as small a discount as 10 per cent?

A. No sir.

Q. You always deducted from his figures more discount than that?

A. Yes sir.

Q. Why did you do that?

(Objected to by Mr. Otterson because it is a cross-examination of the witness with reference to the contents of written papers which are in existence and can be produced.)

A. Simply because it was our lowest wholesale price.

Q. Then you published one rate of discount to the world, and had another in making your settlements with Mr. Everitt?

A. No sir; we did not do anything of the kind.

Q. Why, you had a rate of discount, which was 10 per cent., between the commencement of these transactions be-

tween the plaintiff and the defendants, up to January, 1876, had you not?

A. We had one rate of dicounts to a certain trade.

Q. Then why did you deduct a greater sum from Mr. Everitt in making your settlement with him?

A. Because it was not our lowest wholesale price.

Q. Have you any discount sheet of your lowest wholesale price?

A. I have not here.

Q. Can you produce any, showing what it was between the periods referred to?

A. No sir; I do not think I can.

Q. Do you know P. P. Gustine?

A. Yes sir.

Q. Did your firm sell these goods to him?

A. I do not know what those goods are.

Q. The goods we are speaking of here; no others?

A. I cannot speak from personal knowledge.

Q. Is sales book "C" here?

A. Yes sir; I think it is.

Q. Will you refer to it?

A. Yes sir.

Q. I mean sales-book C, No. 2.

A. No sir; it is not here. It does not cover the time we have examined.

Q. Do you know the firm of Swan & Clark?

A. Yes sir.

Q. Did they purchase the Everitt bedstead from the defendants?

A. I cannot say positively.

Q. Have you sales-book No. 12 here?

A. No sir; not No. 12.

Q. Have you the book covering the sales of September 12, 1876?

A. No sir.

Q. Do you know D. M. Karcher & Sons?

A. Yes sir.

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Q. Did the defendants sell the Everitt bedstead to them?

A. I think they did.

Q. Have you sales-book C, No. 1 here?

A. No.

Q. Do you know Messrs. Cameron & Webber?

A. Yes sir.

Q. Did they also buy the Everitt bedstead from the defendants?

A. I cannot say positively.

Q. Do you know the Herndon Furniture Company?

A. Yes sir.

Q. Did they purchase the Everitt bedstead from the defendants?

A. I cannot say positively.

Q. Have you the sales-book here, covering September, 1876?

A. No sir.

Q. Do you know H. Kampe & Co.?

A. Yes sir.

Q. Did they purchase the Everitt bedstead from the defendants?

A. I cannot say positively.

Q. Have you the sales-book, covering December 8, 1874, here?

A. Yes sir.

Q. Will you be kind enough to refer to it, at the entry o December 8, 1874?

A. After examining the sales-book, I do not find any charge against H. Kampe & Company, on that date, and this is the only sales-book in which those bills were charged during that month.

Q. Do you know Mitchell & Rummelsburg?

A. Yes sir.

Q. Did they purchase the Everitt bedstead from the defendants?

A. I cannot say positively.

Q. Do you know Trymby & Cunningham?

A. I do.

Q. Do you know Freeman & Miller?

A. Yes sir.

Q. And also Moore, York & Howell?

A. Yes sir.

Q. Do you also know Messrs. Allen & Bro?

A. Yes sir.

Q. And Messrs. Mench & Sons?

A. No sir.

Q. Do you know that there is such a firm, and that they did business with these defendants?

A. No sir; I know no such firm.

Q. Do you know C. B. Mench?

A. Yes sir, I do

Q. He trades as a firm, does he not?

A. Yes sir, he does.

Q. Do you know H. Cramer & Company?

A. Yes sir.

Q. Do you know A. Barlow?

A. Yes sir.

Q. All these firms, the names of which I have mentioned, are persons engaged in the furniture business, are they not?

A. Yes sir, they are.

Q. The wholesale trade?

A. Yes sir.

Q. And some of them you know dealt with the defendants, and purchased the Everitt bedstead and improvements from them?

A. On that I have mentioned; the others I cannot say positively.

Q. Will your books show whether the defendants dealt with them or not?

A. Yes sir.

Q. Do you know what discount was allowed to the various firms I have mentioned in their purchases of the Everitt bedstead, from the defendants?

A. I think the discount has been 10 per cent. and 5 per cent. cash, to those parties named, who do business in this city.

Q. You are sure about that, are you?

A. I think I am.

Q. Then will you explain why these defendants deducted from Mr. Everitt 25 per cent?

A. Simply because the discount deducted from Mr. Everitt was the lowest wholesale price.

Q. How was it the lowest wholesale price, if you only allowed to the wholesale trade, 10 per cent. off?

A. Because we have different rates of discount to the city. and the outer town trade.

Q. I am only speaking now of those persons to whom you allowed 10 per cent. only—and yet you deducted from Mr. Everitt 25 per cent. I want to know why you did that, and upon what principle you could do it?

A. We deducted the discount, because we were instructed by the firm that the lowest, or, as it might be called, the best wholesale discounts, were to be deducted in making up the accounts, made with Mr. Everitt.

Q. This best, or lowest discount you referred to, was not that allowed to the branch stores and to special agents of the defendants?

A. Yes sir.

Q. That was a special arrangement made between the defendants and their special agents?

A. That is what we consider the best wholesale price.

Q. And that was based upon special arrangement, made between the defendants and their special agents?

A. Yes sir.

Q. And you took that basis for your settlements with Mr. Everitt.

A. We did not always deduct the largest discount allowed to special agents.

Q. That is hardly an answer to my question. Did you not take that basis upon which to do business with your special agents, and regard it as your lowest wholesale price, and settle with Mr. Everitt upon that basis?

A. Yes sir; with the exception of one instance.

Q. Then where you sold to the general trade, and allowed them a less discount than you allowed to your special agents, still in making your settlements with Mr. Everitt you deducted from him the largest?

A. Yes sir; always.

Q. Then you had two rates of discount; a large rate for your special agents, and your own stores, and a smaller rate for the general outside trade?

A. Yes sir; we have had three or four rates.

Q. Do not you know that Mr. Everitt objected to having the large rate of discount deducted from his accounts, in settlements for his royalty?

A. I never had the slightest idea of it.

Q. The effect of that system was to reduce Mr. Everitt's royalty, of course?

A. It made it smaller in amount.

Q. Do you know that there was deducted from Mr. Everitt's settlements thirty-three and a third per cent?

A. Yes sir; I do.

Q. Do you know how long these deductions were made by these defendants, in their settlements with him?

A. I can tell in a moment (referring to exhibit No. 10). From the first of October, 1877, down to the last royalty paid him.

Q. Can you mention any instance where the defendants allowed any such discount to the general furniture trade?

A. No sir.

Q. Do you know of the defendants selling the right to the Pennsylvania Railroad Company to use the Everitt patent bedstead?

A. No sir; I have no knowledge of it at all.

Q. Do you know of their receiving royalty from the Pennsylvania Railroad Company for the use of it?

A. For the use of two bedsteads that we sold them.

Q. Have you sales book "S" here, and if you have, turn to page 19, the entry of January 13th, 1875.

A. (Referring to sales book "S.") The entry says, "Pennsylvania Railroad Company, to Hale, Kilburn & Co., January,

13th, 1875, order No. 1155, one set of castings and springs, for patent folding bedstead, including royalty to use the same, in special car No. 5, $50, per passenger account, F. P. Levan, Altoona."

Q. What was the price of those castings and springs?

A. I cannot say.

Q. Do not you know that they charged Mr. Everitt $7 for them?

A. I do not.

Q. Will not your books show it?

A. Probably they will. I cannot say so from my knowledge of it.

Q. What is that $50 for?

A. Just what I have read.

Q. Is it for royalty?

A. It does not say so here. Royalty is included in that $50.

Q. Did Mr. Everitt ever get any of that $50?

A. I think he got royalty on part of it.

Q. Will you show it to me out of your books?

A. I will try. (Referring to exhibit No. 10.) I am unable to see from this account whether he ver got royalty on that charge or not.

Q. Have you sales book "B" here?

A. Yes sir. (Book produced.)

Q. It is marked inside, U, page 224, December 14, 1875, —what is the entry against the Pennsylvania Railroad Company?

A. Pennsylvania Railroad Company, December 14, 1875; one French plate, 21¾ by 46¼, $12.20; springs and fittings for one champion folding bedstead including royalty, car No. 60, $35. Ordered by Enoch Lewis. Royalty on bed now in use on car 180, $25; making a total of $72.20."

Q. Was Mr. Everitt the recipient of his share of that royalty?

A. I cannot say.

Q. Will you refer to your books, and see whether they show it?

A. (Referring to exhibit No. 10.) This account does not show it.

Q. If you have sales book C, please refer to page 613, August 3d, 1876, and see if you find a charge there to the New York Store?

A. (Referring to sales book "C.") Yes, sir; I do.

Q. What is it?

A. "August 4, 1876, one set patent folding side rails, to order, 6 feet 3 inches long, ash, crib style, including royalty, $15, less 25 cents, net $25."

Q. Did Mr. Everitt receive his share of that royalty?

A. I cannot say.

Q. Can you show by the defendants' books whether or not he ever did?

A. I do not think that Mr. Everitt got any share of the royalty on those side rails, because I think they were not intended at all for a folding crib.

Q. Do you know of any other instances where the defendants ever received royalties from parties for the right to use the Everitt patent?

A. I do not.

Q. And you are unable to find from the books of the defendants any allowance for payment to Mr. Everitt, for royalty or license, to use his patent and improvements, to railroad companies; will you be kind enough to look over those statements, furnished by the defendants, and sworn to as being correct, (exhibits Nos. 1, 2 and 3 shown witness,) and tell me whether they ever made any mention of those items, in any of those statements?

A. I find on the last page of said exhibit No. 1, an allowance of royalty on the net sum of $67.32 for an ash bedstead, sold to the Pennsylvania Railroad Company.

Q. What I want you to show me is, any allowance by these defendants to the plaintiff, of his one half, which he is entitled to under his agreement, for the license granted by these de-

fendants to the Pennsylvania Railroad Company, allowing them to use his patent and improvements?

A. I find nothing in these statements of such allowance.

Q. And these are the statements of the defendants' account furnished in this case?

A. Yes sir.

Q. If you have sales book "B" here, refer to page 514, and see if you find an entry there of one crib, and state the price of it?

A. (Referring to sales book "B.") One crib, No. 316, large, imitation walnut, with a mattress, $10.50; credit by bill of advertising, $10, leaving a balance of 50 cents. Bill paid. Marked paid, in blue, in pencil.

Q. Was that carried to your petty cash account?

A. Yes sir; it was not a folding crib, it was a common stationary crib made by the firm of Kilburn & Gates, 613 Commerce street.

Q. If you have sales book "T" here, refer to it. In your examination-in-chief you refer to an item charged in sales book T, page 110, and you testified that the same was returned, and credited in your journal; will you show me any evidence of its having been returned to the defendants?

A. On page 29, of journal "E," I find an entry crediting Mrs. Potts, for Merchandise returned, January 21, 1875, $125.

Q. I want you to explain how you identified the entry in the journal with the charge for $80, made by the plaintiff?

A. The plaintiff, in his account, claims royalty on one single bedstead. Eighty dollars was the price of it. We sold it at $100, claiming the right to sell above our list, if we wished, with a flexible spring and mattress at $25, making $125. These were the only goods charged this party, Mrs. Potts, and these were the goods returned and credited, as per the entry explained.

Q. What is the date of the entry in your sales book?

A. January 22, 1875.

Q. What is the date of the entry in your journal?

A. February 27th, 1875.

Q. Then you mean to say that she had these goods all that time, before they were returned?

A. No sir, I do not.

Q. Who had them?

A. We had them. They were returned, I should think from the memorandum in the entry, the same day.

Q. Refer to sales-book "S," and see what entry you find of a bedstead at $140.

A. Referring to sales-book "S": One bedstead, No. 1, veneered, $140, charged against F. M. Holmes & Co., April 30, 1875.

Q. You testified in your examination-in-chief that that bedstead was returned; will you show me the evidence of it?

A. In journal "E," page 244, a credit to Holmes & Co. for one bedstead, charged April 30, 1875, and returned.

Q. What is the date of the entry in the sales-book?

A. The date of the entry is April 30, 1875.

Q. And the date in the journal?

A. The date in the journal is October 20, 1875.

Q. A space of six months intervening?

A. Yes sir.

Q. How were you able to testify that your entry in the journal has any reference to the goods mentioned in the sales-book six months before?

A. From the fact that that bedstead was never paid for, but was kept by Messrs. Holmes & Co. for several months without selling, and then they made arrangements with the defendants to return that particular bedstead.

Q. Were they selling these bedsteads to this firm?

A. They sold a few of them.

Q. How is it you remember this particular transaction?

A. Because the book says so.

Q. Does the book show they held it for six months and could not sell it, and then it was returned because of that?

A. Yes sir; in the ordinary course of book-keeping it does show that.

Q. Will you show it to me?

A. On the sales-book is a charge, on April 30, 1875, of a bed, and the journal entry in October is for a bed returned charged to the same parties on the 30th of April, 1875.

Q. Have you any entry on the order-book of that transaction—of the sale or order?

A. Yes sir; in foreign order-book "N," page 366, we find an order entered to F. M. Holmes & Co., Boston, Mass., for a bedstead, No. 1, veneered, $140; one flexible spring bed, $10, and one mattress $25.

Q. In your examination-in-chief you spoke of the plaintiff in his account having made duplicate charges; will you state what the charge in order-book "K," page 630, is; it is for a bedstead for $150.

A. Yes sir; the order is an order entered from Haywood Brothers, for one patent folding bedstead $150.

Q. Will you show me the evidence of that being charged twice in the plaintiff's statement?

A. I claim that on page 3 of the account rendered by the plaintiff they duplicate a bedstead amount $150, as appearing in the books of the defendants, in order-book "K," page 630, and charged in sales-book "S," page 32.

Q. In the order-book the entry appears in what shape?

A. "One patent folding bed, $150."

Q. Where do you say any connection appears in the books of the defendants with that item?

A. In sales-book "S," page 32.

Q. What is the date in the order-book?

A. November 5, 1874.

Q. And what is the date in the sales-book?

A. November 6, 1874.

Q. How is the article described in the sales-book?

A. One patent folding-bedstead, $150.

Q. Where do you say it next appears in the books of the defendants?

A. It will appear in the journal.

Q. Refer to it, please.

A. It next appears in journal "D," page 372, in a bill amounting to a total of $322.89.

Q. Where is the evidence that that item is charged twice in the plaintiff's account?

A. In the plaintiff's account, page 1, it appears once, as in sales-book "S," page 32, and it is duplicated in the same report, page 3, as taken from foreign order-book "K," page 630.

Q. How are you able to say that those two items refer to the same article?

A. For the simple reason that they give the pages of the books in which they are found.

Q. How are you able to say that the entries in your books refer to the same article when the charges are different in the different books?

A. The charges are not different in the different books.

Q. Is it not $150 in the order-book?

A. Yes sir.

Q. Is it not $165 in the sales-book?

A. No sir; $150.

Q. Where?

A. There. (Indicating on the sales-book.)

Q. That is $165.

A. No sir; that is simply a memorandum.

Q. Is not $150 scratched out. and $165 added in lead pencil, and added up to make the general total?

A. No sir; it is not.

Q. Will you explain to me why the figures were altered from $150 to $165?

A. I cannot. I presume in arranging prices. It was just in the beginning of the manufacture of these things.

Q. Do you know who altered the figures?

A. No sir; I cannot say.

Q. Nor can you tell when they were altered, can you?

A. No sir.

Q. Do you recognize the figures as being those of any of your clerks?

A. I do not; the figures are not altered; there is a memorandum in pencil, but the original figures in ink are the figures used in making the total of the charge.

Q. Are not the original figures in ink, representing $150, crossed over in ink, and $165 in pencil written on the right hand, inside of the book, right opposite?

A. No sir.

Q. Why do you say that the original figures are not crossed out in ink?

A. Because the ink does not appear there.

Adjourned until Monday, July 21, 1879, at 11 A. M.

Philadelphia, Monday, July 21, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

Cross-examination of Mr. O. D. Roberts resumed.

By Mr. Bowman.

Q. At the last meeting you were referring to certain figures in one of the books, and you stated that they were not erased by ink because the ink does not appear there, will you state what they were crossed over with?

A. They were crossed over with lead pencil.

Q. Why are you so sure of that?

A. Because the figures appearing on the outside of the ink figures were made in pencil, and because the lines through the ink figures were erasable by rubber.

Q. Did you not have to remove the paper in order to remove the lines?

A. No sir.

Q. Not at all?

A. I think not.

Q. In your examination-in-chief you referred to certain charges in the plaintiff's account made by his expert as being duplicate charges; did you mention all of the duplicate charges made by the plaintiff's expert in your examination-in-chief?

(Objected to by Mr. Otterson, on the ground that the question has been already asked and answered, the witness saying that he only came down to January 1, 1876, and that he had examined the account no further.)

By Mr. Bowman.

Q. What I want to know is whether you have given us all of the duplicate charges?

A. I have aimed to do that.

Q. You speak of over-charges being made in the plaintiff's account; will you state what they consist of?

A. Mostly in figuring or claiming on amounts above the list prices of the goods.

Q. Mostly charging above the list prices?

A. Yes sir.

Q. In making up your account did you not deduct from the plaintiff charges for the springs, mattresses, and extra finish on the beds, such as mirrors?

A. Yes sir.

Q. You did?

A. We did.

Q. And beds that were finished with gold, and ebony lined, in making up your statement, you deducted those extras also?

A. Yes sir.

Q. Why did you make those deductions; were they not all a part of the bed, and did they not go to make up the price of the bed?

A. No sir; they were extras above the regular price of the bed.

Q. You spoke of different numbered beds; can you tell me how many numbers you had in the trade, in describing the Everitt bedstead and its improvements?

A. I cannot.

Q. Can you give me a few of them?

A. Yes sir.

Q. Please state what they are?

A. Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 22—the number that we have used; some of the numbers that we have used in describing the Champion bedstead.

Q. Did each of those numbers represent a different price?

A. Yes sir.

Q. Which represented the lowest price?

A. No. 16. I think.

Q. In making your settlement with Mr. Everitt which number did you take as your basis?

A. We took the numbers that were published in the list prices.

Q. Which number was that?

A. All the numbers. Whenever a bed of a certain number was sold we gave the number; each time we designated a number, and that number was invariably used.

Q. Do you mean to say that whatever number you sold you took the price of that number as your basis for settling with Mr. Everitt?

A. Always.

Q. Which was your highest price number—the best finished bed I mean?

A. No. 12, I think.

Q. Take No. 12 as an instance; what did they sell for?

A. At different times, I think at different prices, as I recollect the prices.

Q. Give me the average price?

A. For instance, No. 12, three-quarters size, we sold at $170 or $180, I am not certain which, the list price.

Q. What would you return that to Mr. Everitt at?

A. At the list price, less the wholesale discount.

Q. Did you have those made up with mirrors, ebony veneer and gold finish?

A. We had them made up plain, and finished them according to the desire of the customer.

Q. Then the price you settled with Mr. Everitt upon was their price in a plain condition?

A. Plain finish.

Q. And any extras that you put on, you gave him no benefit for the extra charges?

A. No sir.

Q. Did you not sell beds to the wholessle trade with these extra finishing arrangements—with mirrors and ebony and gold finish?

A. I think we did at times.

Q. Then, when you sold such beds to the wholesale trade, you certainly charged more for them than you did in their plain state?

A. Yes sir.

Q. But in settling with Mr. Everitt you always did it upon the basis of the plain condition of the bed?

A. Yes sir.

Q. And always deducted the extra finishing?

A. Yes sir.

Q. Did not these extra touches and finishing sometimes change the value as much as $100 or $200?

A. No sir.

Q. Well, about how much?

A. Well, a mirror added to the bed would change it—would add to the value $20, to the list.

Q. Would add $20 to the list price?

A. Yes sir.

Q. Who instructed you to make your statement and settlements with Mr. Everitt in that way?

A. The firm.

Q. They also instructed you to deduct for the springs, did they?

A. Yes sir.

Q. And they also instructed you to take the lowest wholesale price to their branch stores and special agents as the basis for settlement?

A. Yes sir.

Q. The bedsteads were always sold with springs, were they not? The Everitt bedstead, I mean?

A. No sir; they were not.

Q. They were never sold without a bottom of some kind, were they?

A. Oh! yes.

Q. Without any bottom?

A. Yes sir—except you call the front of the bedstead the bottom.

Q. What I mean is, where the mattress is put on?

A. Yes sir; we sold them frequently without anything but the front of the bed.

Q. In your examination-in-chief you spoke of the goods being sent to the branch stores; those branch stores are kept by the defendants, are they not?

A. Yes sir.

Q. In what cities, in this country?

A. New York, Boston, and Baltimore.

Q. And all the profits and losses of those stores are shared by the defendants, just the same as they are in the home stores?

A. No sir; except in the case of the New York store.

Q. They are all borne by the defendants except in the case of the New York store?

A. No sir; I say they are not. I say they are not borne by the home firm except in the case of the New York store.

Q. How are the losses and profits borne in the other stores?

A. By the agent who has charge of the store.

Q. Does he simply bear the losses?

A. No sir.

Q. What does he do?

A. The goods are furnished him for stock at a certain price. He sells them for what he pleases, and what he gains is his, and what he loses is his.

Q. All he has to account to the firm for is the price they are billed to him at?

A. Yes sir.

Q. But in the New York store, whatever the goods are sold for the defendants get the benefit of?

A. Yes sir.

Q. Or the loss, as the case may be.

A. Yes sir.

Q. Then, no matter what discount the defendants might deduct from goods billed to the New York store, they would get the benefit of the price the goods were sold at, no matter what it might be?

A. Yes sir.

Q. Had the defendants any rule of discount in billing goods to their New York store?

A. Yes sir.

Q. What was it?

A. One-third from the net price.

Q. That is 33 and one-third per cent?

A. Yes sir.

Q. And that is the basis upon which they settled with Mr. Everitt?

A. Yes sir.

Q. It did not affect the defendants either way, no matter what discount they made on those goods; the defendants lost nothing by it. That is, they might have made the discount 50 per cent. as well as 33 1-3?

A. Oh we have a regular per centage to our branch stores, and the New York store was allowed precisely the same as the other branch stores.

Q. And you allowed the same percentage to all the branch stores?

A. Yes sir.

Q. And the special agents in the employ of the defendants who were selling goods?

A. No sir, those are the only three places they get that discount. I would like to add to that answer: With the exception of our agency in Pittsburg.

Q. Supposing a bedstead was sent to the New York house at $100; the discount would be 33 1-3 per cent?

A. Yes sir.

Q. And if the New York house should sell it for $150, would Mr. Everitt get the benefit of that?

A. He would not.

Q. Then you did not return to Mr. Everitt the prices the beds sold for?

A. Never.

Mr. Otterson to Mr. Bowman: If you read the contract between these parties, you will find, I presume, that the defendants were under no obligation to make the reports you seem to be enquiring for.

Mr. Bowman: My answer to that is that the contract expressly calls for the prices for which the goods are sold.

To the witness: Will your books show what the branch stores sold the goods at?

A. No sir.

Q. Then, I understand you to say that the defendants would send goods, the Everitt bedstead, and the improvements thereon, as manufactured by them, to their own stores, to be sold for their own benefit, and would fix a rate of discount—33 1-3 per cent., which was 15 and 20 per cent. higher than was allowed to the general wholesale trade, and those goods would be sold at their own stores for their own benefit and profit, and they would take that rate of discount, arbitrarily fixed between themselves, and deduct it from Mr. Everitt, and have it as their basis of settlement of his royalty with him?

A. I have not said so.

Q. Will you state wherein my question differs from the facts which you have given to us?

A. Yes sir.

Mr. Otterson: I object to the witness being cross-examined in this manner, for he may omit a single paragraph or point of the question, and would be held to have admitted it for not denying it.

Mr. Bowman: Mr. Roberts is an intelligent witness, and competent to answer any question I may put him on this subject; but, if he needs any enlightenment on any branch of my question, I shall be very happy to give it to him.

The witness: That is a very long question; yet my evidence goes to show that I have not admitted anything that Mr. Bowman proposes now to make me admit.

Mr. Bowman: I want an answer to my question. I ask that question again.

Mr. Otterson to the witness: If the question is not intelligible, or in the form in which you can answer it safely, you have a right to refuse to answer it.

By Mr. Bowman:

Q. I repeat my former question?

A. My answer is the same; that I have not said any such thing.

Q. That is your answer?

A. Yes sir.

Q. Did you not say that the New York store was a branch store of the defendant's?

A. I did.

Q. Run by them, and the profits and losses of the store shared by them?

A. Yes sir.

Q. And did you not say that goods which they billed to that store they allowed a discount of 33 1-3 per cent. on?

A. Yes sir.

Q. And did you not say that they deducted that per cent. from Mr. Everitt in settlement with him?

A. Yes sir.

Q. And did you not say that if goods were billed to the New York house at $100, they would deduct 33 1-3 per cent. from that in their settlement with Mr. Everitt?

A. Yes sir.

Q. And that if they were sold by the defendants in their New York store at $150, Mr. Everitt would get no benefit of the extra $50?

A. Yes sir.

Q. And this percentage or discount of 33 1-3 per cent between their own stores, they fixed themselves?

A. Yes sir, of course. They fixed every other discount.

Q. Mr. Everitt had no say about it, and they always had that basis, 33 1-3 per cent, as the basis of settlement with him?

A. Yes sir.

Q. Can you give me any instance of their dealing with outside general public wholesale trade where they allowed any such discount?

A. I cannot give you any instance.

Q. Will you state the highest discount they ever allowed to the general wholesale trade?

A. We have one customer, one wholesale customer, to whom we give a discount of 40 per cent. of the list prices; we have given him as high as 43.

Q. That is one wholesale dealer, is it?

A. Yes sir.

Q. Who is he?

A. The Tobey Furniture Company, of Chicago, Ill.

Q. Is he a special agent of the defendants?

A. Yes sir, he is the agent for the sale of this bed in Chicago.

Q. They made that special arrangement with him?

A. Yes sir.

Q. How long has that arrangement with him been in existence?

A. I think something like 18 months at that discount, or about that.

Q. My question was, will you name the highest rate of discount allowed by the defendants to the general wholsale trade, not their special arrangements with a special agent?

A. The general discount with the general furniture trade is 20 per cent. from the list prices, and five per cent. for cash.

Q. That is the highest?

A. That is the general discount for the general furniture trade.

Q. Is that the discount allowed to the general trade in this city?

A. No sir, it is not.

Q. What is that?

A. The discount to the furniture trade in this city is 10 per cent. from the list price, and five per cent. for cash.

Q. You mean to say that the defendants have not sold goods to the general trade outside of the city for 10 per cent. discount off?

A. Not in late years; they may have done so in the beginning of the transaction; I do not recollect. The discounts have varied many times.

Q. They may have done so the first few years?

A. I do not know whether they have done so or not; I cannot say from positive knowledge.

Q. How many agents have the defendants to whom they allow such a discount of forty per cent. and over?

A. They have but one.

Q. You spoke in your examination-in-chief of goods charged in the plaintiff's account, as made up by his accountant, which were sent to the New York store, amounting to various sums. You stated that the entries as to those goods did not represent sales. Can you say whether or not all of those goods so entered have been sold?

A. I cannot.

Q. Did the defendants keep any separate books of the goods sent to their branch stores?

A. Order-books; yes sir.

Q. Did they keep any other separate books?

A. No sir.

Q. Did they keep any separate book or books to represent their dealings with Mr. Everitt?

A. Only the book that has been put in here as an exhibit of his account.

Q. Where were the figures taken from which make up that book?

A. They were taken from the sales-books.

Q. From the general books of the firm?

A. Yes sir; you are speaking now of the general account?

Q. Yes sir; it was simply a summary of the business of the

firm in relation to his bedstead, as it appeared upon the books of the firm?

A. Yes sir.

Q. The entries in the separate book were not made as every bedstead was sold or shipped?

A. They were taken from the charges of the different bedsteads.

Q. Were the entries in the separate book just as they appeared upon the general book of the firm?

A. The accounts were—the discount and number of the bedstead; probably the copy of the bill was not given, but the figures were all there.

Q. But there is not sufficient description of the article to enable you to identify it with the article described in the general books?

A. Yes sir; in every case.

Q. Have you got that book here?

A. Yes sir. (Book marked No. 10 produced.)

Q. Whose handwriting is this book in?

A. In the handwriting of Mr. John Bimmock, the part at which you are looking now.

Q. Have you the New York returns here?

A. Yes sir. (Book produced.)

Q. I want May 8, 1875.

A. The returns of New York?

Q. Yes sir.

A. (Referring to book). May 8, 1875.

Q. What are the entries May 8, 1875? Is there an entry of "One crib, No. 3, plain, and mattress?"

A. You mean on the statement of the New York store?

Q. Yes sir.

A. Yes sir.

Q. What is the price of it?

A. Fifty dollars.

Q. That was the price; fifty dollars?

A. Yes sir.

Q. Can you tell me upon what figures they settled with Mr. Everitt on that crib?

A. They settled at the basis of $40, list.

Q. What number have you got in your books?

A. No. 3, plain.

Q. Will you refer to the New York list of the same date and say if there is an entry of "One bed, No. 3, veneered, and springs?

A. No. 3; yes sir.

Q. What price have you got?

A. One hundred and twenty dollars.

Q. What return did they make to Mr. Everitt of that sale?

A. Ninety-five dollars, list.

Q. Do you mean they allowed him royalty on $95?

A. No sir; they allowed him on $95, less the discount of 10, 10 and 10.

Q. That is, they allowed him royalty?

A. Of the net sum, after deducting 10 per cent., and 10 per cent., and 10 per cent. from $95.

Q. That would leave how much?

A. That leaves $69.25 net.

Q. And that bedstead was sold or billed to the branch store, New York store, at $120?

A. No sir; sold at that.

Q. It was sold by the branch store at $120, returned to Mr. Everitt at $95 net, from which 30 per cent. was deducted, leaving a principal of how much?

A. $69.25.

Q. Upon which they allowed him royalty?

A. 30 per cent. was not deducted from $95; 10, 10 and 10 is considerably less than 30 per cent; 10 per cent. off, then 10 per cent. off of that, and 10 per cent. off of that; there is quite a difference between that and 30 per cent.

Q. Turn to May 20 of the New York returns?

A. (Referring to book). Yes sir.

Q. One bed, No. 3, veneered, and springs, have you that?

A. Yes sir; we have that entry.

Q. What did the articles sell for?

A. They sold, together, for $117.50.

Q. Sold by the defendants?

A. Yes sir; at the New York store.

Q. What return did they make to Mr. Everitt?

A. $95; the same as the other.

Q. What figures did they allow Mr. Everitt royalty on?

A. $69.25.

Q. Will you turn to the return sales of New York of October 2, 1875?

A. (Referring to book). October 2d.

Q. Have you there "One bed, No. 1, spring? Have you returned that?

A. "One bedstead, No. 1, and springs." Yes sir.

Q. What was that sold for?

A. $150 for the two articles.

Q. What did you return it to Mr. Everitt at?

A. That is returned to Mr. Everitt at $140, list.

Q. Did they settle with him upon that basis?

A. The basis of $102.06, net.

Q. They settled with him upon the basis of $102.06, net; how much did they deduct from that?

A. 10, 10 and 10.

Q. Mr. Everitt received royalty upon how much?

A. Upon $102.06.

Q. Turn to the same date; have you an entry of "One bed, No. 3, plain?"

A. Yes sir.

Q. What was that sold for by the defendants?

A. For one No. 3 bedstead and spring $100, for the two articles.

Q. Upon what sum did they allow Mr. Everitt royalty?

A. $80; that is $80 list, $58.32 net.

Q. I want to know the sum upon which they allowed him royalty?

A. $58.32.

Q. Turn to September 20th, the same year?

A. (Referring to book). September the 20th.

Q. Have you a return there of three bedsteads, No. 1?

A. September what have you there?

Q. September 20th.

A. We have not any statement of that date.

Q. Have you of the 26th?

A. No sir.

Q. Is it November 20th or 26th?

A. November 20th.

Q. Have you a return there of "2 bedsteads, No. 1, and springs, $310?

A. No sir.

Q. No such return?

A. No sir.

Q. Have you any return of September 18th, from the New York store?

A (Referring to book.) September 18th; yes sir.

Q. No such return?

A. Yes sir; we have a return of September 18th.

Q. Have you "2 beds, No. 3, plain, and springs, $193,50"?

A. Yes sir.

Q. What were they sold at by the defendants?

A. $193.50, for the four articles.

Q. In your account with Mr. Everitt, what are they returned at?

A. At $80 each.

Q. And upon what amount did you allow him royalty?

A. $58.32 each.

Q. Have you on the same return "one bed, No. 1, plain, and spring"?

A. We have "one No. 1 bedstead and spring."

Q. What was that sold for by the defendants?

A. $160 for the two articles.

Q. In their account with Mr. Everitt, what do they return it as—what figures do they return it at?

A. $140.

Q. Upon what amount did they allow him royalty?

A. $102.05.

Q. Do you mean they allowed him royalty on that sum, or did they first deduct 33⅓ per cent.

A. They deducted 10, 10 and 10 per cent.

Q. Then they did not allow him royalty on $102?

A. $102.05.

Q. Deducting 10, 10 and 10 from that?

A. Yes sir.

Q. And allowed him royalty on the balance?

A. On $102.05; $140 I told you previously, list.

Q. Will you turn to the return sheets, October 9th, 1875?

A. (referring to book.) Yes, sir.

Q. Have you "one bed, No. 3, and spring"?

A. Yes sir.

Q. What is it sold at?

A. $112 for the two articles.

Q. In their account with Mr. Everitt, what is it returned at?

A. It is returned at $95, list; royalty paid on $69.20, which is an error against their own house; we paid him too much royalty.

Q. You think if you paid him royalty on $69. for goods sold at $112, the firm paid him too much?

A. I made my answer before.

Q. Turn to October 30th.

A. (Referring to book.) October 30th.

Q. "One bed, No. 0, three-quarters springs, $67.50"?

A. Yes sir.

Q. What was that bed sold for?

A. For $67.50 for the two articles.

Q. In their account to Mr. Everitt what is it returned at?

A. Returned at $45, list; royalty paid on $32.80, net.

Q. Turn to the return sheets of October 14th, 1876?

A. (Referring to book.) Yes sir.

Q. Is there a return there of "2 beds, veneered, and springs"?

A. Yes sir.

Q. What were they sold for?

A. They were sold for $207 for the four articles.

Q. What was the price returned to Mr. Everitt in the account with him?

A. They were returned at $90 each, list; $73 net.

Q. Royalty was allowed the plaintiff upon what amount?

A. $72

Q. Have you the return sheets for August 5th, 1876?

A. (Referring to book.) August 5th, 1876.

Q. Have you a return there of "one crib, No. 3 finish"?

A. Yes sir.

Q. What was it sold for?

A. Sold for $50.

Q. What price was it returned to the plaintiff at?

A. Returned at $42.50, list, $34, net.

Q. Royalty was paid upon what?

A. $34.

Q. Are these particular instances of sales a fair representation of the manner in which the accounts were made and rendered to the plaintiff?

A. They are.

Q. Have you the return sheets of October 7th, 1876.

A. (Referring to book.) Yes, sir.

Q. Have you a return of "one bed, No. 3, veneered, and springs"?

A. Yes sir.

Q. What price was it sold for?

A. $98.33 for the two articles.

Q. What was it returned to the plaintiff at?

A. At $90, list, $72, net.

Q. On what sum was Mr. Everitt allowed royalty?

A. $72.

Q. Have you the return sheets of July 10, 1878?

A. No sir; I have no such returns.

Q. I notice in your testimony given in your examination-in-chief, a statement showing the sale of a Centennial bed, $355. Do you know what that bed sold for?

A. No, sir; I cannot say.

Q. Do you know where these figures came from which you gave in your examination-in-chief—$355?

A. Yes sir; those came from the returns of the New York store.

I can now answer the previous question One Centennial bed, best mattress and spring, was sold for $425.

Q. What was the price returned to Mr. Everitt?

A. It is not in the regular account; it is in the exceptions. We returned it at $355, list, a discount of one-third; net, $236.67.

Q. On what sum was he allowed royalty?

A. $236.67.

Q. You stated in your examination-in-chief that you went over the account made up by Mr. Hale, which was furnished the plaintiff as being a correct statement of the accounts between him and the defendants; you omitted also a list of errors in that account; will you state whether you compared the account with all the books of the firm?

A. Yes sir.

Q. Did you go over every item?

A. In the whole account?

Q. Yes sir.

A. No sir.

Q. How are you able to say that there are not other errors in that account besides those which you detected?

A. I am able to say that to the best of my knowledge and belief from the manner in which the account was taken at the time, that there are no other errors in the account.

Q. But you did not verify every item; you simply took them as Mr. Hale had them in this separate book?

A. Up to the first of January, 1876, we compared every item in our books.

Q. After that you did not?

A. We took them from the account as we made it during the years of the transactions.

Q. But you did not examine the books as to every item?

A. No sir.

Q. You took it for granted they were correct, as appearing in the separate account with Mr. Everitt?

A. Yes sir.

Q. Where did you get those errors from? Are they not from the year 1878, which you submitted in your examination-in-chief?

A. (Referring to book) I do not see any date here at all; they are up to the 1st of Jan. 1876—no date probably at all.

Q. Is not the last entry for a sale made in 1878?

A. Yes sir, I see that it is.

Q. That was July 1878; "one bed for $425"?

A. Yes sir.

Q. For which there was no return made in the account furnished Mr. Everitt?

A. No sir; there was no return made.

Q. Do you know why that was missed in the account?

A. That was a clerical error, as I understand it.

Q. And if there was a clerical error in July 1878 as to such a large sale, is it not very probable that there were other clerical errors during the years intervening between 1876 and 1878?

A. I think not.

Q. And, discovering these 15 or 16 errors in the account, you still thought the separate account furnished Mr. Everitt was accurate enough not to require your going over every item to verify it after 1876?

A. I did.

Q. Were there not certain beds, Everitt bedsteads and improvements upon which the defendants, in making their settlements with Mr. Everitt, allowed him no royalty at all?

A. None that I know of.

Q. In their settlements did they allow him any royalty upon No. 16 bed?

A. I believe not.

Q. Then they did not allow him royalty on all of them?

A. They allowed, so far as my knowledge goes, royalty on all Everitt bedsteads sold.

Q. And improvements?

A. Yes sir; as far as I know.

Q. Why did they deduct the royalty from No. 16?

A. They claimed it was not Mr. Everitt's patent.

Q. Is that the only exception where they withheld royalty?

A. They have withheld royalty only on beds that they claim are not Mr. Everitt's patent.

Q. What are they? I want to know what number they are?

A. No. 17, I believe; I think that is all.

Q. Nos. 16 and 17?

A. Yes sir.

Q. And 15 also?

A. No sir.

Q. They refused to pay him royalty upon those beds because in their judgment they were not his patents or improvements?

A. That was the reason no royalty is figured on those bedsteads, I believe.

Q. Mr. Everitt always claimed his right to royalty on them, did he not?

A. I do not know anything about it, I never heard him claim it.

Q. Was not Mr. Everitt's patent marked on every one of them, the date of it, up to 1879?

A. I do not know.

Q. You do not know?

A. I do not.

Q. You never saw a note upon these very beds—the Everitt bedstead, on which was the date of his patent March 24, 1874?

A. I never did.

Q. You do not mean to say it is not there?

A. I do not.

Q. You never saw it?

A. I never saw it.

Q. You spoke in your examination-in-chief of having a merchandise consignment account?

A. Yes sir.

Q. Were those accounts furnished the plaintiff with the other books which were given his expert to make his account?

A. They were furnished him because they were included in the charges in the sales books.

Q. Were the books themselves furnished, is my question. Were the merchandise consignment books themselves furnished the plaintiff and his accountant?

A. They were.

Q. Are those books here now?

A. With the exception of the ledger of the firm; yes sir; they are here.

Q. The merchandise consignment books?

A. Yes sir.

Q. Will you show me one of them?

A. Yes sir; (book produced;) there is one of them.

Q. That is your sales-book?

A. Yes sir.

Q. Do you call that your merchandise consignment account?

A. No sir; I say that it contains the merchandise consignment account with our branch stores.

Q. What I want is the merchandise consignment book, not your sales-book. Have you the merchandise consignment book here. Were they ever here, or ever furnished the plaintiff and his accountant?

A. They were here, furnished the plaintiff, and are here now—the books showing the goods consigned to our New York, Baltimore and Boston stores.

Q. Then when you speak of a merchandise consignment account you mean to say that you meant then a sales-book?

A. I mean to say that these accounts are in our regular sales books.

Q. But they are not all consignment accounts?

A. I confess that I do not understand the question at all.

Q. You say that the merchandise consignment account is transferred to the sales book, do you not?

A. No sir; I say it is transferred from the sales book.

Q. To the merchandise consignment account?

A. Yes sir; in the ledger.

Q. Where does your merchandise consignment account appear?

A. The merchandise consignment account appears in the ledger, the main ledger.

Q. Then it does not appear in a separate book?

A. No Sir.

Q. You spoke of having journals; were they furnished the plaintiff in making up his account?

A. I think they were.

Q. Are you sure of that?

A. Well, I cannot say positively; I think they were sent among the other books.

Q. Have you invoice books?

A. Yes sir.

Q. Were they furnished the plaintiff?

A. Those that were called for were.

Q. Were not all the books called for which show the business transactions of the defendants as to the manufacture and sale of the Everitt bedstead and its improvements?

A. Yes sir.

Q. The invoice books show, do they not, business transactions relating to the Everitt bedstead?

A. No sir.

Q. They do not?

A. They do not, except in two cases in which we have shown the book, of the return of some bedsteads.

Q. You have spoken of certain marks which you introduced in keeping the books for the defendants, which, you never knew to be used by anybody else, are you sure you have named all the secret marks you had in keeping those books?

A. I do not know of any secret marks at all. I think I

have named all the marks by which we determined whether an article ordered is delivered or countermanded.

Q. Were they such marks as would be understood by any professional book-keeper, without special information?

A. I should think not.

Q. Then they were secret, were they not?

A. I do not know that they were secret; they were very simple.

Q. You never gave Mr. Hoffman, Mr. Everitt's book-keeper, any instruction about them, did you?

A. He asked no instructions from me at all.

Q. How did you expect him to understand them unless they were explained to him?

A. I suppose that he took the books, and if he had needed any information he would have asked for it, which he did not.

Q. But how could he know that any such marks out on the margin of a book would require any explanation?

A. Well, if I were going to examine a set of books and found something that I could not understand, my common sense would teach me to ask the man who kept the books.

Q. And every little mark you saw about the margin and on the page, you would ask what it meant?

A. Why, certainly, if I did not understand it.

Q. Were not you asked to explain, to give all the light you could about these accounts and books?

A. Only by yourself; right here in the office.

Q. These marks you refer to are made in pencil as well as in ink?

A. I think they are in some cases; yes sir.

Q. Have you got the sales-book of September 8, 1876?

A. Yes sir; out of town or city sales-book?

Q. The foreign sales-book; have you got that?

A. (Book produced). I have the sales-book, September 8, 1876.

Q. September 26, I mean?

A. September 26; yes sir.

Q. Have you an entry there of a sale to the Herendon Furniture Company?

A. Yes sir.

Q. Can you state from the defendants' books what discount is allowed that firm?

A. They were allowed 10 per cent. on that bedstead.

Q. Is that a wholesale transaction?

A. That, I think, was a special transaction on an old style bedstead.

Q. I do not want to know what you think; I only want what you know?

A. That is all I know.

Q. Then you do not know?

A. No sir.

Q. What do the books say it was?

A. The book says that it was a sale of a bedstead, No. 5, veneer, spring and mattress, booked at $160, subject to a discount of 10 per cent.

Q. Then the books say nothing about its being a special arrangemeut, do they?

A. No sir.

Q. You have no recollection of that particular transaction?

A. I have not.

Q. Have you the sales-book November 29, 1876?

A. Yes sir. (Referring to book). November 29, 1876.

Q. Is there an entry of sale to Mitchell & Rammelsburg?

A. Mitchell & Rammelsburg.

Q. Of what city?

A. The book does not say, but I think of Cincinnati.

Q. What is the entry there—a sale?

A. The entry is a sale of one bed-stead, No. 7, veneered and ebony. spring and mattress, $336.50; 10 per cent. off, $303.85; boxing, $5; $308.85.

Q. The discount allowed is 10 per cent.?

A. Ten per cent.

Q. On those sales can you tell me, from the books of the

defendants, what discount is deducted from Mr. Everitt in their settlement with him of his royalty?

A. (Referring to book). Ten per cent.

Q. Just 10 per cent. more than was allowed by the defendants, is it not?

Mr. Otterson—That is a matter merely of arithmetic; I object to it.

By Mr. Bowman.

Q. That is 10 per cent. more than the defendants allowed, is it not?

A. No sir.

Q. How much more is it?

A. Not any more than the defendants usually allowed them.

Q. Not any more than was usually allowed to Mr. Everitt?

A. No; I mean as the regular discount which he deducted from him; 20 per cent. was deducted from him.

Q. 20 per cent. was the amount deducted by the defendants from Mr. Everitt?

A. Yes sir.

Q. But what I want to know is the right of the defendants to deduct 20 per cent. when they only allow 10?

A. As I have already answered three or four times, it was not the lowest discount, but the lowest wholesale discount, and that is what we deducted from Mr. Everitt's account?

Q. What right had these defendants to make any discrimination?

Mr. Otterson—I object to that; that is a question for the court to settle.

By Mr. Bowman.

Q. These defendants always assumed the right of saying what they should allow Mr. Everitt, and you made up your figures accordingly?

A. I do not know anything about it—about their assumption.

Q. Did you not get your directions from them?

A. Yes sir.

Q. Mr. Everitt was never consulted as to what discount should be taken off, was he?

A. I do not know that he was; I presume he was; he was always satisfied with the settlement.

Q. Do you mean to swear that Mr. Everitt was always satisfied with his settlements with these defendants?

A. So far as his dealings with me were concerned, and I always paid him, he never made the slightest objection in any sense of the word to the settlement that we presented to him.

Q. You were not one of the defendants?

A. No sir.

Q. Then he would not complain to you. Do you mean to say he never made complaint to these defendants about their statements to him?

A. I do not know anything about it.

Q. Do you not know that he refused for a long time to give them a receipt in full, and simply receipted on account for money paid him?

A. I do not know, sir.

Q. Do not your books show that?

A. I think not.

Q. You think not?

A. No sir.

Q. Will you turn to them and speak positively?

A. Our receipt-book will show a receipt in full.

Q. You say that, do you?

A. I can show it to you.

Q. I would like to see them?

A. Look at the latest receipt, signed April, 1878.

Q. I want you to show a receipt in full?

A. You have lots of them in full.

Q. I refer to the last year or two; I am not speaking of the earlier years?

A. The receipts will show for royalty, as per statement rendered.

Q. Royalty as per statements rendered?

A. Yes sir.

Mr. Otterson—I object to the further cross-examination of this witness with reference to the contents of written papers; the papers speak for themselves.

By Mr. Bowman.

Q. Were there not numerous receipts given during the last year or two, simply on account?

A. There were when payments were made on account.

Q. Were they not all, previous to January, 1877, given on account; and will not your books so show?

A. I will have to consult the books before I would answer that question positively.

Q. Well, you can look at them?

A. (Referring to books)—Up to the date mentioned the receipts were all given on account, because there had been no settlement of the account, and was not until January 13, 1877, when we settled the account in full, according to receipts we had.

Q. Do you not remember that when that receipt of Jan. 13, 1877, was signed, Mr. Everitt refused to sign it, and went away from the store without his money, and came back two days afterwards and said he was obliged to have some money, and still refused to sign the receipt in full, because he was dissatisfied with the account; and the defendants told him that if he did sign it he could go back of it, it was not binding upon him?

A. I cannot remember anything of the kind.

Q. Do you remember Mr. John Noblet and Mr. Kilburn were present when Mr. Everitt went out, and refused to sign the receipt?

A. I do not remember any of those circumstances; I remember more than Mr. Noblet, but not in connection with that receipt.

Q. Did not you then tell Mr. Everitt that the receipt would not be binding upon him?

A. I cannot say that I did.

Q. Do you mean to say that you did not tell him so?

A. No; because I cannot say one way or the other.

Q. You will not say whether you told him or not?

A. No sir.

Q. Had you not some conversation on the subject or in regard to that particular receipt?

A. None that I know of or recollect to this day.

Q. Do you not know that Mr. Everitt had been complaining for a long while about the manner in which the defendants were treating him in their settlements or accounts?

A. No; I think the only complaint that I can recollect of Mr. Everitt making was that he was entitled to a copy of the sale, over which I had no control whatever, and paid no attention to it, except as a matter of friendly intercourse between Mr. Everitt and myself.

Q. Do you remember of his coming there with a bookkeeper, and wanting to examine the books, and he was refused?

A. Yes sir.

Q. You remember the Secretary of the Company refusing to allow him to examine them?

A. Yes sir.

Q. Was not his desire to examine the books based upon his dissatisfaction with their accounts?

A. I presume it was.

Q. Do you know that the President of the Company also afterwards refused to allow him access to the books?

A. Yes; I also gave privilege within two days afterwards to examine them.

Q. Do you mean to say that he told Mr. Everitt two days afterwards he could examine them?

A. I mean to say he told me, and I told Mr. Everitt.

Q. You are sure of that?

A. I am sure of that.

Q. No doubt about it?

A. No doubt whatever.

Q. Have you sales book of September 12th, 1876?

A. (Referring to book.) September 12th.

Q. Have you any entry there of sales to Swan & Clark?

A. I do not find any on that date.

Q. Any other dates, to that firm?

A. No sir; I could not tell from these books.

Q. Have you any books here which would show your transactions with that firm?

A. No sir; the ledger is not here, which is the only one I could turn to readily.

Q. Have you sales-book C, No. 1?

A. Yes sir.

Q. Turn to June 15th, 1876?

A. (Referring to book.) June 15th.

Q. Is there any entry there of sales to D. M. Karcher & Son?

A. Yes sir.

Q. Are they a city firm—a Philadelphia firm?

A. Yes sir.

Q. What discount was allowed on that sale to that firm?

A. Ten per cent.

Q. Can you tell me what discount was deducted when the defendants settled with Mr. Everitt?

A. (Referring to book.) 20 per cent. was the discount deducted in settling with Mr. Everitt.

Q. That was in 1876?

A. 1876, yes sir.

Q. Turn to September, 8th, 1876?

A. (Referring to book.) September 8th.

Q. Do you find any account of sales made to Cameron & Webber?

A. Yes sir.

Q. What discount was allowed on those sales?

A. 10 per cent.

Q. In settling with the plaintiff, what discount did the defendants charge him with?

A. 20 per cent.

Q. Have you December 8th, 1874, sales-book—city?

A. (Referring to book.) December, 8th, 1874.

Q. Have you a sales to H. Kampe & Co.?

A. I do not find any on that day.

Q. Any entry about that date?

A. No sir.

Q. Moore, York & Howell, November 12th, 1877?

A. No sir; I do not find it at all.

Q. Do you see any entry there about that time, or have you any other sales-book for November, 1877?

A. Yes sir; I will look at that in a minute. (Referring to another sales-book.) No sir; I do not find that at all—not within a week of that date.

Q. Turn to sales-book "A," 2, November 6th, 1877?

A. (Referring to book.) November 6th, charged against Allen & Bro. for one bed, No. 1, 48 inch, spring and a 1 5-8 mattress, $128, less 10 per cent.—$12.80—leaving $115.20; that is to a Philadelphia firm.

Q. What discount was allowed Mr. Everitt in settlement?

A. 20 per cent. from $130.

Q. May 17th, 1878; A. Barlow?

A. (Referring to book.) I do not find that in here of that date.

Q. Is there any other book in which it will appear?

A. (Examining another book.) I do not find it in either of the two books.

Q. Sales-book, January 28th, 1879, city.

A. The book is not here.

Q. Do you knowof your personal knowledge of sales to C. B. Mench & Sons and A. Barlow—both?

A. I think there were sales made, but I could not describe what they were. Barlow—I know we sold him.

Q. Do you know what discount was allowed those firms?

A. 10 per cent.

Q. Do you know what discount was charged Mr. Everitt in settlement?

A. No sir; I cannot say, because I have no book to refer to?

Q. You have spoken of the different branch establishments carried on by the defendants; which one of those stores does the largest business?

A. The New York store.

Q. Does the New York store do as much business as the Philadelphia store?

A. No sir.

Q. Does the New York store do as much business as all the other outside stores combined?

A. I do not know; I have not figured that up.

Q. Give your judgment about it; the best of your judgment, that is all I want; your general judgment?

A. I should think more than the other two put together.

Q. That is, Boston and Baltimore?

A. Yes sir.

Q. Those are the only outside stores that you have?

A. We have not but one outside store, as I have already explained.

Q. That is the New York store?

A. The New York store.

Q. That does as much business, you think, as the other two combined?

A. The other agencies; yes sir.

Re-examined.

By Mr. Otterson.

Q. You had different rates of discounts between the Philadelphia sales and sales outside of Philadelphia?

A. Yes sir.

Q. Were the city sales and the outside sales of a different or of the same general character—as to whether they were retail sales or wholesale?

A. Well, they were—some of them.

Q. Why have you one rate of discount for city and another for country sales?

A. The low rate of discount was given the city trade in self-protection. By giving them the same discount as out of town sales, or out of town trade, they could get our retail sales right straight along, and divide the discount with our customers. We were compelled in self-defence to keep their discount down.

Q. Sales to out of town houses, then, were to parties who would not compete with your sales at all?

A. Yes sir.

Q. Were or were not the sales in the city mostly the sales of single articles—single bedsteads, for instance?

A. Yes sir; mostly one article at a time.

Q. Ordered by a dealer to supply his customers?

A. Yes sir.

Q. Do you know whether or not these orders were to supply their orders then existing, or whether they were ordered from you in anticipation of future orders?

A. I could not say as to that; it would not appear. We would not know anything about that.

Q. The sales that were made out of town were made partly through what you have called branch stores, which were merely agencies?

A. Yes sir.

Q. Or consignments?

A. Yes sir.

Q. And partly through traveling agents?

A. Yes sir.

Q. What do you mean by the Chicago agency and the Pittsburg agency? Do you mean agents of yours whose exclusive business it was to sell these goods, these bedsteads?

A. I mean certain established firms there, one in each city, who made the sale of our goods a specialty, combining it with their regular business.

Q. And what was the arrangement of your house with those agencies as to the number of agencies that they would establish in a place?

A. The agreement with those two agencies that I mentioned was that we should have no other agents for the sale of our goods in those cities.

Q. They were to have the exclusive sale of these bedsteads in those particular places?

A. Yes sir.

Q. Why was so large a discount allowed to the Chicago agency?

A. The main reason was that because of the excessive freight and the long transportation, we were compelled to give them that discount, so that they could sell at reasonable figures.

Q. Were the New York and Boston agencies anything more or less than ordinary consignment accounts?

A. No sir.

Q. Where else did you sell your goods besides the four places named—Boston, Baltimore, Pittsburg and Chicago?

A. Where else did we make sales?

Q. Yes sir—throughout the country?

A. In nearly every city in the United States.

Q. How were those sales made?

A. Sometimes by traveling agents; mostly by direct orders from the houses or parties themselves, through the means of our circulars.

Q. Outside of particular parties with whom you made special arrangements?

A. Yes sir.

Q. Were your rates of discount off the list prices, uniform or nearly so?

A. Uniform always to out of town parties, and uniform to city parties:

Q. Only they were different?

A. Different; yes sir.

Q. The out of town sales were generally larger in amount and as to the number of bargains; they approach nearer to wholesale orders?

A. Well, I cannot say, but they were sold one article at a time, because the articles were expensive, and then the parties would not carry much stock.

Q. Were your settlements with the plaintiff upon the basis of the uniform out of town sales, or otherwise?

A. Do you mean in the matter of discount?

Q. Yes sir; discount?

A. The matter of discount was figured according to those allowed our agents, our special agents.

Q. In all cases was that so?

A. Yes sir.

Q. How did those discounts compare with the discounts you generally allowed to the trade outside?

A. Generally a little greater discount.

Q. To what extent would be the difference?

A. Probably 10 per cent.

Q. Between the allowance that you made to your special agents and the allowance that was made to the general trade of the country, outside of your special agents, and outside of any special arrangement?

A. Yes sir.

Q. You used the word "duplicate" a number of times in your direct examination with reference to, as I understood it, entries in the report made by the plaintiff's expert?

A. Yes sir.

Q. In reading it, to my mind it is susceptible of applying to two articles—duplicate bedsteads, instead of duplicate entries relating to these; which did you mean?

A. I meant that they were duplicate entries of the same bedstead; relating to the same bedstead.

Re-cross-examined.

Q. When you speak of special agents of the defendants do you include the New York branch store?

A. No sir.

Q. You do not consider the New York store a special agent?

A. No sir.

Q. From your knowledge of the defendants' business as a professional book-keeper, would it practically make any difference to the defendants in their dealings with the New York store whether they allowed 33⅓ per cent. or 50 per cent. discount?

A. Yes sir.

Q. How would it affect the general result?

A. Because the New York store was supposed to make——

Q. Not what it was supposed?

A. Was supposed to make a profit over and above a certain cost to them of the articles which they sold. They had nothing to do whatever with the cost of manufacture of these articles. That store sold exactly and only from the cost of the articles to them?

Q. That is your supposition?

A. That is the fact.

Q. Well, the fact. Then how would that affect the general result in the defendants' profits or losses; in other words, could not the defendant charge 100 per cent. discount, and if they sold their bedstead at a profit they would realize a profit, would they not? Or if they sold it at a loss, they would sustain the loss?

A. Certainly.

Q. Then, no matter what they fixed the discount at, it was no loss to them, but a loss to Mr. Everitt?

A. Well, I can only offer the same answer that I did before.

Q. Practically did it make any difference to them?

A. They wanted, of course, to sell at a profit under all circumstances.

Q. And if they sold at a profit they got the benefit of it?

A. Yes.

Q. And they taxed themselves with a high rate of discount?

A. The same as they gave to the agencies of our house.

Q. The special agents with whom they made special arrangements?

A. Yes sir.

Q. And they took that high rate of discount as a basis of settlement with Mr. Everitt?

A. Yes sir.

Q. While they were selling a great many goods to the home trade at 10 per cent. off?

A. Yes sir.

Q. When the defendants would sell goods out of their Philadelphia store, did they also deduct a discount from Mr. Everitt in settling with him?

A. Why certainly.

Q. That is, they gave themselves a discount there just the same as when they sold from the store in New York?

A. Yes sir.

Q. And what did they make that 33 1-3?

A. The uniform discount.

Q. 33 1-3?

A. Yes sir.

Adjourned to meet at the call of the Master.

Philadelphia, Tuesday, October 14th, 1879.

Parties met at the office of the Master.

Present: The Master, Mr. Otterson, Mr. H. S. Hale, Mr. Mitchell, and Mr. Everitt.

Owen D. Roberts re-called and examined.

By Mr. Otterson:

Q. Mr. Hoffman states that page 662 of sales book "A" is missing. Is that so?

A. (Examining book) It is.

Q. Also that page 668, in sales book "C" is missing. Is that so?

A. (Examining book) It is

Q. What is the material of those books?

A. Tissue-paper.

Q. And they are copy-books—letter press?

A. Yes sir.

Q. Can you account for those missing leaves?

A. Only on the general principle that they tear very easily when wet a little. Sometimes it will be done by the corner of the brush, or by lifting suddenly, when right wet. Lifting with oil paper would tear them in a moment.

Q. Can you tell from the postings whether any of the matter is missing?

A. I can.

Q. How can you tell?

A. By the journals to which these entries are transferred.

Q. Will you produce the journals and state what they contain?

A. (Producing journals) The journal shows consecutive journalizing from page 667, to 669, showing the omission entirely of page 668, under date of September 22nd, 1876.

Q. Both of those pages 667, and 669, contain entries on the same date?

A. Yes sir.

Q. These journal entries are on what page of the journal?

A. Page 499, of journal "E."

Q. Is that entry of $10.50 the last entry on page 667, of the sales book?

A. It is.

Q. And is 33.38 the first entry on page 669?

A. It is.

Q. Will you turn to the journal entries from book "A" and state whether you find page 662 missing?

A. It is.

Q. Is there any of the matter missing?

A. None of the matter is missing, only one page of the sales book; page 661, of sales book "A" is shown in the journal, the last item being $149.33.

Q. Where is that on the journal?

A. Page 661. The first item on page 663 is $5.70, shown on page 193, of journal "A" and is the next consecutive entry in sales book "C."

Q. The loss of those tissue-paper leaves is the result of what—of design or accident?

A. The result of accident entirely.

Q. And you say that none of the matter is lost?

A. None whatever.

Q. Is the loss of sheets in that way, a matter of frequent occurrance?

A. It is very unusual, although these are not the only ones which we could show. They are always the result of accident.

Q. Do you know whether there were any wholesale sales to city dealers?

A. What we call wholesale sales?

Q. Were there any that you call wholesale sales?

A. Yes sir; we call all sales to furniture dealers wholesale sales.

Q. Whether there are one or more articles in the sale?

A. Yes sir; the amount had nothing to do with it.

Q. Do you know what the ordinary rate of discount was on those sales?

A. In the city, ten per cent, and five for cash.

Q. Do you know how those sales were made?

A. Generally by orders taken in the store from dealers.

Q. Do you know whether the goods were delivered to the dealers' warehouses, or whether they were delivered to his customer?

A. Both—sometimes delivered right to his customer, and sometimes delivered to their store.

Q. Do you know of any deduction of 10 and 20 per cent for cash?

A. I do not.

Q. Were there any such deductions?

A. Not to my knowledge.

Cross-examined.

By Mr. Mitchell.

Q. How do you account for the absence of those leaves?

A. Only on the general principle that the leaves are made of tissue-paper, and that when wet, they are easy to tear. And, except under careful handling, the corner of the brush would tear a leaf out in a minute, or the careless lifting of the paper, or the oil-paper under the leaf when perfectly wet, would tear it.

Q. You see the remnant of the leaf in each case, do you not?

A. Yes sir.

Q. Showing that there was a leaf there that had been torn out?

A. Yes sir.

Q. Have you no knowledge about it?

A. I have no knowledge of those two leaves

Q. It is all speculation?

A. That is all.

Q. Are those the only two leaves which were referred to in the testimony in this case as having been torn out?

A. I believe so.

Q. Did you journalize entries from your order-book into your journal, direct?

A. From our sales book, but not from the order-book?

Q. The tissue-book which you have there, is the sales-book?

A. Yes sir.

Q. Did you journalize everything from that book into your journal?

A. Yes sir.

Q. What else did you carry into your journal?

A. The usual odd entries.

Q. What are they?

A. Merchandise credits, goods returned, and credits to balance account.

Q. What did you journalize them from?

A. Not journalized from any book. That was the original entry in those cases.

Q. The journal entry then is the first entry in those cases?

A. Yes sir.

Q. All bills payable and bills receivable went directly into this journal?

A. Yes sir.

Q. Did you not have a bill-book?

A. The ordinary note-book, giving a description of the notes.

Q. What record did you keep of bills payable?

A. The record in the ordinary blank note-book.

Q. What record did you keep of your bills receivable?

A. The same book.

Q. Then you do have a regular bill-book?

A. It is not called a bill-book, hardly. It is what we call

the note-book; it contains merely a description of the notes given and received.

Q. Did you journalize from that book into the journal?

A. It can hardly be called journalizing. It is what we call the original entry of the transaction where notes are concerned.

Q. What I am after is not what you call it, but what you do?

A. That is what we do.

Q. Do you not enter it first in the note-book and then from that into the journal?

A. No sir; We give no page in the other book at all. These entries do not show that it was transferred from any book.

Q. When a note transaction is had, do you put it immediately in the journal or into the other book first?

A. We put it into the other book first.

Q. How often do you make up the journal?

A. We make up the journal of those things once a month.

Q. Where do you get the items at the end of the month?

A. From this note-book. The journal does not show that it comes from the other book; there is no memorandum of pages.

Q. You say that all the sales which were made by these defendants were wholesale?

A. No sir; I did not say so. I said that they were both wholesale and retail.

Q. The sales of this Everitt bed?

A. Yes sir.

Q. Now, first, about the wholesale sales. What was the discount taken off?

A. The discount varied. In the city we gave 10 per cent. and 5 for cash.

Q. Making 15 where cash was paid?

A. No sir; making 10 and 5.

Q. What other discount did you take off?

A. Then we had customers out of town to whom we gave a discount 20 per cent. and 5 for cash; and we had others to whom we give one-third straight, net, and then one other to whom we gave forty per cent.

Q. What other one was that?

A. The Toby Furniture Company of Chicago.

Q. A branch of this manufacturing company?

A. No sir.

Q. Were not some of the same gentlemen interested in it?

A. No sir.

Q. What was the reason of the discrimination in their favor?

A. I cannot give you the reasons. It was an arrangement between the Toby Manufacturing Company and the Hale & Kilburn Manufacturing Company.

Q. Did they keep a branch store for the Hale & Kilburn Manufacturing Company?

A. No sir.

Q. Were they not advertised as such?

A. They may have been.

Q. By the Hale & Kilburn Manufacturing Company?

A. It may have been so.

Q. Then, if it was advertised as such, the advertisements are untrue?

A. Well, it may have been a mistake. If they were advertised as branch stores it was untrue, simply because it was a mistake and they should not have advertised in that way.

Q. Are they not so advertised in this paper? (Trade Bureau, August 16th, 1879, page 16, shown witness.)

A. Yes sir.

Q. To whom did you give thirty-three and a third per cent. off?

A. E. Edmundson & Son, of Pittsburg, the Boston branch store, managed by N. L. Stebbins, and the Baltimore branch store, managed by D. C. Burson.

Q. These are branch stores or special agencies of the Hale & Kilburn Manufacturing Company?

A. The last two are.

Q. Is the firm of E. Edmundson & Son special agents for the Hale & Kilburn Manufacturing Company?

A. They are special agents—I will change that word "special" to sole agents in Pittsburg.

Q. Under an agreement?

A. I believe they are.

Q. They would not give the agency to anybody else?

A. No sir.

Q. To whom else was given 25 per cent. discount, or 20 per cent.?

A. To the out-of-town furniture trade.

Q. Was it given to all furniture dealers who lived outside of Philadelphia?

A. Yes sir.

Q. Without exception?

A. Yes sir; to anybody in the furniture trade.

Q. Did the Herendon Furniture Company of Cleveland, Ohio, get 20 per cent. off?

A. I cannot call to mind what their percentage was. We had not sold them but one lot until within a few days.

Q. Did Rammelsburg & Co., of Cincinnati, get 20 off?

A. They got more than that.

Q. Nothing else?

A. Not to my knowledge.

Q. Were your goods sold to Brooklyn at 10 off?

A. No sir; 20 and 10.

Q. Making 30?

A. Making 20 and 10.

Q. How about Troy?

A. Troy, I think, was sold in the same way.

Q. Nothing less?

A. I do not say so; I do not call any instance to mind. I cannot keep all these accounts in my head.

Q. But as a general rule, not less?

A. Not less than 20, except it may have been in the beginning of the trade, when, I think, the general discount was less than 20 per cent; I think it was 15. Our discounts have not always been 20 per cent.

Q. You have said in a former examination that there was no dispute between Mr. Everitt and the defendant except as

to the monthly accounts. Did you not write this letter? (Letter shown witness.)

A. Yes sir.

Q. Refreshing your memory by it, I will ask you whether that letter convinces you that you were wrong in your former statements?

A. I will not change my previous answer until I see the preceding testimony. Everybody knows about this (referring to the letter,) it was an open letter. I have not seen the testimony at at all; and most of my testimony was taken long before anything occurred in regard to this (referring to the letter.)

(Letter marked for identification by the master, "C. S. P., Ex, 10-14-79.")

Q. In whose handwriting is this letter? (Letter shown witness.)

A. I think it is John B. Kilburn's, as near as I can tell.

Q. Who is he?

A. He is the assistant book-keeper of our firm.

(Letter marked for identification by the master, "C. S. P., Ex, 10-14-79.")

By Mr. Otterson.

Q. What do you know about this last paper produced.

A. Nothing, whatever.

Henry S. Hale sworn and examined.

By Mr. Otterson.

Q. In what relation do you stand to this Company?

A. I am the treasurer of the Hale & Kilburn Manufacturing Company.

Q. What do you know about this letter last produced, dated April 19, 1878? (Letter shown witness.)

A. This is a copy of a letter we received on that date from Colonel Mason, of Washington. The original of this letter was shown to Mr. Everitt on the very day it was received in our office. It was then laid by, and that afternoon or the

next day Mr. Everitt came in and wanted a copy of it. I told him I would look it up and have the copy made, which I did.

Q. And this is the copy?

A. Yes sir; it is copied in the handwriting of John S. Kilburn, one of our book-keepers.

Q. And made for Mr. Everitt at his request?

A. Yes sir.

Q. You have the original of that letter?

A. I think I have, unless it is here in this office.

Q. On what date was that letter received?

A. I should think it was received on the 11th, but I will not be positive.

Q. Was there any alteration of the date of it during any time?

A. No sir.

Q. Mr. Everitt states in his testimony, "I read that letter, and at first glanced at it." This was on the 10th of April. "I saw that the date of it had been changed from the 5th to the 10th, and that is why I asked for the envelope." Is that true or is it not true. Had the date been changed from the 5th to the 10th?

A. It had never been changed in our office, and if it was changed before, it was changed before it was received by us.

Q. You have the original of that letter?

A. Yes sir.

Mr. Mitchell (to Mr. Otterson)—I call for the production of the original letter with the envelope.

Mr. Otterson (to Mr. Mitchell)—The letter will be produced without a call.

By Mr. Otterson.

Q. Have you the envelope accompanying the letter?

A. No sir.

Q. Do you know what has become of the envelope?

A. I do not. It was put into our waste-basket, I suppose, where we put all our envelopes.

Q. Mr. Everitt says in his testimony that he read that let-

ter, and at the first glance at it he saw that it was dated on the 10th of April, and adds: "I saw that the date had been changed from the 5th to the 10th, and that is why I asked for the envelope. Mr. Harry Hale gave it to me, and I looked at the envelope, and I saw by the envelope that it had been received at the Philadelphia post-office on the 6th, in the morning. I remarked to Mr. Hale that it was very strange that a letter should be dated in Washington on the 10th, which was received on the morning of the 6th in Philadelphia. Is that true or is it false?

A. I remember no such conversation or incident.

Q. You say the date of this letter corresponds with the date of the original, which was never changed, and which was received in due course after that date?

A. Yes sir; through the post-office; it was received in our mail on the very morning that it was shown to Mr. Everitt, and opened in the presence of Mr. C. Kilburn and my brother, J. Warren Hale.

Q. What are No. 16 beds?

A. They are a certain style of bed we make which does not contain the Everitt patent, nor any part of it.

Q. You make other bedsteads and other furniture besides folding bedsteads?

A. Yes sir; great quantities of them.

Q. How long have your firm been in business in Philadelphia in that line?

A. We have been in business in Philadelphia about twelve years.

Q. Long before you knew Mr. Everitt, or knew anything about folding-beds?

A. Yes sir. We first commenced in the picture-frame business.

Q. Did you or did you not include No. 16 beds in your account with him?

A. We did, by mistake, include them in his account. I will not say that we ever included the 16 beds, but we have included Nos. 5, 11 and 18, which are on the same order; that is, outside of the patent.

Q. Mr. Everitt states that you charged him with twenty-six bed-bottoms, $99 and some cents, I believe it was, and adds: "I never bought any bed-bottoms off of them, nor their books will not show it, and since then I do not think I have been paid for any bed-bottoms." What were those twenty-six bed-bottoms?

A. They were spring beds that were used in this folding-bed, upon which we paid him a royalty by mistake; that was in the early part of the business. It was the first twenty-six beds we sold with bed-bottoms in, and one day there was a bedstead standing outside of our office with one of those bottoms in—the main office in the front part of the store. Mr. Everitt came in, and I spoke to him, and said: "Mr. Everitt, why we have been paying you royalty on those spring-beds; that is not a part of the bed, and we cannot do that; we will have to charge them back to you." And he smiled and said, "All right," or words to that effect; and so we charged them back to him, and they appeared in the account. We found them in the account.

Q. Was that with or without objection from him?

A. It was without the slightest objection from him.

Q. What were those spring-beds, or spring-bottoms, as they are called? Were they peculiar to that bedstead, or were they such as could be used in any bedstead or without any bedstead?

A. They are spring-bottoms, that can be used in any bed, whether it is a folding-bed, an ordinary bedstead, or whether it is on the floor, and can be used with any bedstead.

Q. Was there anything peculiar about them?

A. Not the slightest. Of course, we fit them to the folding-bed, but they can be used on any bed.

Q. They can be fitted to any bed?

A. Yes sir. I can take a regular spring-bottom, which we use now in the folding-bed, and take it right out and lay it on the floor and sleep on it; and I can put it into an ordinary bedstead if the bedstead is of the right width to receive it.

Q. Were those bedsteads in use or otherwise, before the folding-bedstead was invented?

A. Those spring-beds were, a long while ago; years and years before.

Q. Were they any part of the plaintiff's patent?

A. Not the slightest.

Q. Did you ever have any conversation with Mr. Everitt about this matter of the Stark patent, about which we have heard, or were you ever present when such a conversation was held?

A. I was present when considerable conversation was going on between me, Mr. Everitt and Mr. Kilburn in regard to the Stark patent, and Mr. Kilburn tried his best to get Mr. Everitt to do something in relation to the Stark patent. He told Mr. Everitt that Mr. Stark agreed to take one thousand dollars for it, and asked him whether he would not buy it. Mr. Everitt replied that he knew all about it; it was good for nothing, and that he would have nothing to do with it.

Q. Did he say when he knew about it, or when he first knew about it?

A. He did not mention any time; he said he knew about it long ago, or something to that effect.

Q. Did he state when he knew about it with reference to your license?

A. No sir.

Q. As to whether he had learned of it since the license to you?

A. He spoke of it as if he knew of it long ago and did not want to have anything to do with it. And furthermore, he said that before he would sacrifice anything more on his patent, he would lose the whole of it first.

Q. Was there anything said about his being solicited to purchase it?

A. He was solicited to purchase it at one of those interviews.

Q. By whom?

A. By Kilburn.

Q. Had he been previously solicited to purchase it by any one outside of your firm before you were interested in it?

A. I could not state.

Q. In many of these accounts there are mattresses. Are they hair mattresses, or are they spring mattresses?

A. They are hair mattresses as a rule. We made very few husk and spring mattresses. These were at that time all hair mattresses of the best quality.

Q. They were not especially adapted to any particular form of bed were they?

A. No sir; they could be used on any bed. We simply put a button or a buckle on the side of the mattress to hold it in the folding bedstead; that was all the difference. We could take one of those mattresses right off and put it on any bed.

Q. What about the bedsteads with mirrors in them, and with golden ebony finish, etc?

A. Those were extras to the bed that were put on afterwards.

A. They were only an extra finish to the same form of bedstead?

A. Yes sir; we added the mirrors to them, they were built wi hout them.

Q. Do you know anything about Mr. Everitt being refused access to the books?

A. He never was, to my knowledge; not for one day.

Q. Did you ever know of his examining the books?

A. I have seen him at the office a great many times, but really I could not say whether he examined them or not. I know he examined one of the books many times.

Q. That was the book containing his special account?

A. Yes sir.

Q. He does not complain that that was withheld from him; I mean in regard to the other books?

A. I cannot say.

Q. Did you ever know of his presenting himself with an

accountant or counsel and asking to have the books examined?

A. I never did.

Q. He complains that statements were not furnished to him. Can you tell us about that?

A. There were some things said about statements along in the first part of the commencement of the manufacture of these bedsteads, and I told him that we were ready at any time to make out statements when he would tell us exactly how he wanted them made; and he said "never mind; wait until we get going awhile and then I will let you know," or words to that effect; and then it was delayed awhile. He opened a store on Chestnut street for the special sale of these goods, and the store from appearance did not pay him; at any rate, we had to pay his rent, and of course that was charged to him. That was another reason, I suppose, for the statements not being made out.

Q. Did that business ever change the balance so that it was against him?

A. Oh yes sir; it was against him for some time.

Q. How long?

A. I should think it was a year or more before it was settled up, but I really could not say positively how long. It was some time.

Q. Mr. Everitt produced a receipt for $162.50 from your firm; and he was asked how that money was paid by him. He said, "they kept it out of my royalties. I objected to it. They kept it in spite of me." Do you know what that $162.50 was?

A. I do; I recollect, I think, that it was for a lawyer's fee, and according to the agreement, he was to pay half of the whole fee.

Q. What was the whole fee?

A. Twice $162.50.

Q. Then this $162.50 was the one-half of the counsel fee?

A. Yes sir.

Q. To whom was it paid?

A. To Mr. Harding, patent-attorney, and another attorney on Chestnut street somewhere; I do not know the name.

Q. You do not know what service they had been called upon to render in the matter?

A. They were called upon to make searches to ascertain whether the Everitt patent infringed the Maine patent or not.

Q. At whose instance was that inquiry made?

A. Jointly between the two—between Mr. Everitt and Mr. Kilburn.

Q. And this sum $162.50 was the half of the lawyer's fee?

A. Yes sir.

Q. State whether there was any objection made to its being deducted?

A. I never heard any objection.

Q. You say that the 10, the 11, the 16, the 17, and the 18, beds were all manufactured by your firm?

A. Outside of the Everitt patent.

Q. But that in the early part of your business some of the 16's, the 10's, the 11's, and 18's, had got into his account?

A. Yes sir.

Q. And that you say was a mistake?

A. Yes sir.

Q. Was it afterwards corrected?

A. No sir; we paid it and let it alone.

Q. You say it was a mistake?

A. Yes sir; positively so. We allowed it I believe, at that time for the simple sake of saving trouble.

Q. Was that mistake discovered before this litigation commenced?

A. Yes sir.

Q. And did you stop accounting for those bedsteads before this litigation commenced?

A. We stopped a little while and then afterwards agreed to pay him to save trouble as I said before.

Q. That was long before the litigation?

A. Yes sir; that was before we knew of this Stark patent.

Q. When did you first know of the Stark patent. How long was it before that letter of April 10th, 1878?

A. I think it was the first part of February that we first knew of that patent.

Q. Do you know how you got the information of it?

A. The first information I got of it was from my brother.

Q. Did you ever see Mr. Stark?

A. Yes sir.

Q. Where?

A. In our office.

Q. Was that before or after the 10th of April, 1878?

A. It was before; it was the first part of February.

Q. And you saw Mr. Stark?

A. Yes sir.

Q. Did you have any conversation with him?

A. Very little. Mr. Kilburn had most of the conversation.

Q. Was it in your presence?

A. Yes sir; a great deal of it was.

Q. Did you have any conversation with Mr. Everitt about Mr. Stark's visit, and the object of his visit?

A. I do not know as there was any more than what I have stated.

Q. Did you report to Mr. Everitt the fact that Mr. Stark had been in there?

A. No sir; I do not think I did.

Q. Were you present when anyone else did?

A. Mr. Kilburn informed him that Mr. Stark had been there.

Q. In your presence?

A. Yes sir.

Q. Did you ever see Mr. Stark and Mr. Everitt together?

A. No sir.

Q. You saw Mr. Everitt and Mr. Kilburn together when this Stark patent was the subject of conversation?

A. Yes sir.

Q. What passed between them?

A. Mr. Kilburn told Mr. Everitt that Stark was there, or had been there, and asked one thousand dollars for his patent. He asked Mr. Everitt whether he would purchase it, and Mr. Everitt said no, that he would not have anything to do with it, that he knew all about it. That is the sum and substance of it.

Q. Did he then say when he first knew about it?

A Yes sir; that he knew about it long ago—that he knew all about it, and that he would not have anything to do with it.

Q. What is the peculiarity of the Everitt patent in actual operation?

A. It is a folding-bed that folds up in the form of a wardrobe, and the only difference between that and Mr. Stark's patent is that the side pieces on the foot-board extend above the side-rail or box when it is up, forming a place to hold pillows and bed-clothing. There is another claim in his patent which we never have used.

Q. I want to know what appears in the article in use different from other bedsteads?

A. The general appearance of the Everitt bed is the same as other wardrobe beds, and the only distinct difference in the patents is the extending above the side-rail.

Q. In that it differs both from the Starke and Maine patents?

A. Yes sir.

Q. And in other respects are they alike?

A. In other respects they both have a head-board and they both have a body.

Q. Are they in all respects alike?

A. Yes sir; they are very similar.

Q. What about this matter of discount. Were your sales in the city of Philadelphia wholesale or retail sales?

A. They ought to be called retail sales because they were sold one article at a time, and to the furniture men or trade who had, perhaps, already secured a customer, and they would

come to our place and have the order filled or executed; and a great many times we would deliver the article direct to the private party and set the bed up in the house.

Q. Had you a uniform rate of discount for those customers?

A. We allowed them 10 and 5. At one time we allowed them more.

Q. When you say 10 and 5, do you mean 10 off first, and 5 off the balance for cash?

A. Yes sir.

Q. You sold yourself largely to individual consumers in the city?

A. Yes sir; the largest bulk of our sales were to private parties in the city—and great deal the largest; and the reason that a greater discount was not given to the city trade, was just for our own self-protection in retailing goods. If we had given them a greater discount they would have been sure to have cut the price or discount.

Q. Have your rates of discount been the same in the trade from the beginning down to this time?

A. They have changed a great many times.

Q. State how they have varied as to the classes of customers and how they have varied as to time in different times.

A. First, we gave off 10 and 5; then 20; then 20 and 10; then 20, 10 and 5; then 10, 10 and 10; one-third; 40 per cent. 43 per cent. is the highest I know of, and, in other cases, we have made special sales where it would figure considerably over 43.

Q. Did Mr. Everitt ever make any remark upon the subject of your discounts, as to their being too low or the price of the bedstead being too high?

A. He thought, along toward the first, that the price of the bedstead was too high, and he thought it best for them to be lowered, and that we would sell more of them.

Q. How did your rates of discount vary in regard to the different class of customers in different localities?

A. To our special agents, or those that made a business of buying the beds wholesale and keeping a stock of them, and advertising them, we gave a uniform discount—the same dis-

count that we have taken off and used as a basis for figuring Mr. Everitt's royalty, which was agreed upon between Mr. Everitt and ourselves. It was agreed from the very start that we were to use as a basis the lowest wholesale price. We had so many different discounts that it was thought best by both parties to take off a uniform discount, the same as that taken off to our special agents and stores and those who made a business of wholesaling the goods.

(Objected to by Mr. Mitchell because the agreement as to the rate of discount between the defendants and Mr. Everitt is in writing.)

Q. When was this agreement of which you have spoken?

A. It was along in the early part of the commencement.

Q. I mean as to the uniform rates of discount?

A. Yes sir; the same as is taken to these special agents and our own stores.

Q. By special agents do you mean parties exclusively engaged in selling these goods, or do you mean those who had exclusive rights in particular localities to sell them?

A. They were usually furniture dealers who would buy a number of beds and agree to advertise them, and push them; and we agreed verbally with the most of them, to give them the sole sale, or agency, of those beds in that city, town or locality.

Q. Is it in that sense, or in what sense, that Messrs. Edmundson & Son in Pittsburg are the agents of your house, and the Toby Furniture Company of Chicago?

A. Yes sir.

Q. Prior to the time when you first say there was a uniform rate of discount agreed upon as the basis of your settlement with Mr. Everitt, were any inquiries ever made about your rates by him?

A. Frequently. Mr. Everitt would frequently say, "Well, Harry, what are you giving off now." I would tell him whatever the discount was at that time to these special agencies or dealers, and he would say "all right;" and he never made the slightest objection in any way, shape or form to that discount.

I would like to have that distinctly understood, because I know what I am saying.

Q. Do you know what the rate of discount was which was allowed to Mr. Everitt himself when he was busy selling the goods?

A. From memory it is 20, or 20 and 5; but whatever the discount was, it was the same that we gave to our own stores and the other agencies at that time.

Q. State what that discount was?

A. To Joshua Jones & Son, of Cincinnati, we sold quite a number of beds, 6 or 10, and gave them 10, 10 and 10 off; that was August 10th, 1875. We took the same discount off in figuring Mr. Everitt's royalty.

To Mr. N. L. Stebbins, Chicago, we sold at same rate, 10, 10 and 10 off, November 27th, 1875, and allowed Mr. Everitt the same.

We sold a bed to Kilburn & Gates, of Burlington, Vermont, November, 1875, for which we allowed 10, 10 and 10 off, and the same to Mr. Everitt.

We sold July 11th, 1876, 3 beds to Francis and Jane Smith, of Glasgow, Scotland, for which we allowed 20 per cent. off, and we allowed the same to Mr. Everitt, which was the discount we were taking off at that time to all the agencies.

We sold to Bancroft & Boyden, of Boston, a number of beds at 20 per cent. off, September 6th, 1876, and allowed the same to Mr. Everitt.

We sold to the Oshawa Cabinet Company, of Toronto, on October 28th, 1876, and allowed 20 per cent., and allowed same to Mr. Everitt.

We sold to Marcus Stephen & Co., of Detroit, Michigan, at 20, 10 and 5 off—five was the cash discount—and allowed the same to Mr. Everitt.

We sold to Burrill, Comstock & Co., of St. Louis, a number of beds, at 20, 10 and 5 off, and allowed the same to Mr. Everitt.

These houses bought the beds and agreed to advertise them and push them, and do all they could to sell them, in consid-

eration of our allowing them that discount and of their having the exclusive right to sell them.

Q. I think you had cases where you allowed a greater discount to Mr. Everitt, or where you settled with him at a less discount?

A. From May to October, 1877, we took off to the New York store 33⅓ per cent. discount, and to Mr. Everitt we allowed 20, 10 and 5; that is 31 per cent. and a fraction. The reason that that discount was given to the New York store and was not taken off of Mr. Everitt, was because the other agencies and such parties as I have mentioned were not getting that same discount. When we allowed one-third to others, then we allowed it to Mr. Everitt.

We sold April 18, 1876, to G. G. Braman. of this city, one No. 1 veneered bed, with the best mattress and spring, for $125. We were charging at that time $35 for the mattress, and $10 for the spring. We deducted that, and it makes the bed $75, netting us $75. The list price of that bed is $125. We paid Mr. Everitt a royalty on $96, which is nearly 40 per cent. off of the bed. We were allowing Everitt at that time 20 per cent., the same as the agents.

We sold to Isaac Keith, of Troy, one No. 10 three-quarters and one No. 3 three-quarters for $95, boxed and delivered. It leaves a net to us of $79. We paid a royalty to Mr. Everitt on $85.50, which is over 35 per cent. off.

We sold to H. Leech, of Troy, one No. 1 three-quarters veneered, mattress, springs, for $125, box and delivered, which netted us, less the spring and mattress, just $77. The list price is $130. We paid a royalty to Mr. Everitt on $88.92, which is over 40 per cent. off.

We sold to Christian Wise, of Utica, N. Y., one bed and spring, three-quarters, No. 10, April 17, 1877, boxed and delivered, for $40. It netted us $26, less the freight. We paid a royalty to Mr. Everitt on $38.37.

We sold to C. Hayden, April 23, 1877, one No. 5 and one No. 10 for $110, and boxed, netting us $100 for the beds, less the box. We paid Mr. Everitt a royalty on $106.02.

We sold Vincent Storm & Co., of Cleveland, a number of

beds at 30 per cent. off, a bed bill, which means subject to 5 for cash. They netted us about 30 and 10 off, and we figured them to Mr. Everitt at 20, 10 and 5 off.

These are a few of the instances and amounts; most of them I sold myself, wherein the discount allowed to the customer was greater than the basis upon which I settled with Mr. Everitt.

Adjourned until Thursday, October 16, 1879, at 3 P. M.

Philadelphia, Thursday, October 16, 1879.

Present:—The Master, Mr. Otterson, Mr. H. S. Hale, Mr. Mitchell and Mr. Everitt.

Examination of Henry S. Hale resumed.

By Mr. Otterson.

Q. Did you give a reason, or any reasons, why a larger discount was allowed to the Toby Manufacturing Company than to other dealers; if you did not, just state so, or if you had a reason, give it?

A. I did not. The reason was because of the great expense in getting them to Chicago. They insisted on getting a larger discount, or they would give up the sale of the bed, and take hold of some other bed. It was the best we could do with them. They wanted and hung on very hard for forty-five per cent., and we closed it at that time at 43. We are now selling them at 40 off.

Q. In sales-book S, page 191, February 13, 1875, is an entry referred to by Mr. Everitt in his direct examination: "Pennsylvania Railroad, one set of castings and springs for patent folding-bedstead, including royalty to use the same in car No. 50, $50." I want to know what royalty there was in that transaction, or if there was any license to the railroad company to use the articles referred to, derived in any way except from the fact of their having purchased them?

A. They purchased the iron work for those bedsteads, and we charged them that amount, whatever the amount of the bill

was, and it was a mistake; that is, the royalty should go with the article, the same as we sell our regular folding-bedsteads.

Q. To them the same as anybody else?

A. Yes sir.

Q. You say there was no license or authority aside from this simple transaction of the purchase and sale?

A. No sir.

Q. What do you mean by that?

A. I mean the right to use that bedstead, or the articles sent with the purchase.

Q. On sales-book B, page 224, October 14th, 1875, "Springs and fittings for one champion folding bedstead, including royalty, car No. 50, $30." What do you mean to say to that?

A. I make the same reply. The words "including royalty," which were put on the bill, should not have been there, as the right to use the bed went with the article.

Q. Sales-book C, page 613, August 3, 1876, says: "One set patent folding side-rails, to order, 6 by 3 long, ash, crib style, including royalty, $15." What as to that?

A. I make the same answer to that, with the explanation that they were made for an ordinary crib, and not a folding-crib.

Q. Do you know when the first bedstead of this pattern was sold after this contract was made with Mr. Everitt?

A. In October, 1874, there was one bedstead sent on sale, or in the last of September, to Freeman & Co., on Second street. That was returned by them a little while after, unsold.

Q. Was that the one that was sold in October?

A. No sir; it was not sold to them; it was sent on sale.

Q. Was that the one which was sold in October?

A. No sir; it was not.

Q. The first one that was sold was sold in October.

A. Yes sir; to Mr. Lippincott.

Q. When did Mr. Everitt take the store in Chestnut street?

A. It was the following June, 1875. The lease may have been made a short time before that.

Q. About how long did he continue to run the Chestnut street store?

A. One year.

Q. That carried it down to June or July, 1876?

A. Yes sir.

Q. Were the sales of this bedstead many or few from October, 1874, on?

A. They were comparatively few for that fall, and I make the same remark for the following spring.

Q. Did your firm furnish money to Mr. Everitt during that time, or any portion of it, that was not due him; did you advance money to him; loan money to him?

A. In June we loaned him $200, and took his note for it. That was to help him start the store, and we also paid his rent every month from that time until the close.

Q. You furnished him money to pay his rent?

A. Yes sir; from that time till the close of the store.

Q. When was that?

A. That was the following June; he kept the store for one year.

Q. Can you state how much was advanced to him in that time?

A. We advanced him $2170 odd dollars. We had notes to that amount standing against him on the 1st of January, 1877.

Q. Was that over and above deductions made for royalties which had been earned by him, or were the royalties to be deducted from that sum?

A. The royalties were to be deducted from that sum, but there was no time but what the balance was in our favor.

Q. No time up to that time?

A. No time up to that time; yes sir.

Q. Will you state, if you please, whether that was an occasion of indifference on the part of Mr. Everitt about the statements which he complains he did not get, because of the fact that the balance was against him, and he knew it?

A. It was.

Q. When was that balance finally wiped out by the accruing of royalties, or otherwise?

A. Just about that time—January 1st, 1877.

Q. I understand you to say that at that time you had his notes to the amount of $2170?

A. We did hold his notes at that time, and we settled up to that time and gave his notes to him.

Q. Then you gave the notes to him at that time in payment of royalties, as it were, instead of cash, which you had given him before?

A. Yes sir; we had given him some cash as he went along.

Q. Besides paying his rent?

A. Yes sir; we paid him some cash on account of his royalty.

Q. But the balance was against him?

A. Yes sir; down to that time.

Q. Mr. Everitt says, on page 73 of the testimony, that he was not paid in full at the outset, the first four months, and that you did not settle in full up to January, 1877—during the first four months of the contract was there anything doing?

A. No sir.

Q. Was there a dime doing?

A. No sir; no bed sold until October, 1874.

Q. And the contract was from April 16th?

A. April 16th was the date of the contract.

Q. Then it was over six months after the contract was signed before a single bedstead was sold?

A. Yes sir.

Q. Then during the first four months that he speaks of, there was nothing to acconnt for, whatever?

A. No sir.

(Mr. Mitchell objects to Mr. Otterson leading the witness.)

Q. On page 73 of the testimony, Mr. Evritt says: "I think, for the first four months, or nearly so, they paid me all. I think so; I do not know for certain."

A. We did not owe him anything to pay him.

Q. Mr. Everitt says that there were no accouuts given to him of bedsteads with looking-glass fronts, extra finish, ebony and

gold, and says that no such bedstead appeared in his accounts. Will you tell me whether bedsteads with such finishes were accounted for, and how?

A. Every one of those bedsteads was accounted for, but not the extra finish or looking-glass fronts.

Q. How do you mean?

A. They were accounted for as bedsteads.

Q. How were they separated?

A. The price of the looking-glass, for instance, was taken off of the bedstead, and the price of the bedstead carried out, according to our list. They were complete without the looking-glass or extra finish.

Q. How about the ebony or gold finish?

A. The same with that.

Q. You do not mean to say that the ebony and gold were taken off?

A. The price of the extra finish was taken off.

Q. Do you know whether Mr. Everitt was consulted about the purchase of patent rights that were subsequently purchased by your firm—the Maine and Stark patents—and invited to participate in their purchase?

A. I know that he was.

Q. By whom was he solicited?

A. By Mr. C. Kilburn and also myself.

Q. You mean these Maine and Stark patents?

A. Yes sir.

Q. And that, before you had any interest in them?

A. Yes sir. The very day that we received notice from the Maine patents, in person, was through Mr. Townsend, the president of the company who owned the Maine patent at that time, and Mr. Everitt saw Mr. Townsend in our office the very day he arrived there, and was consulted about the Maine patent. Mr. Townsend returned to Boston, and in a day or two after we received a letter from him. That letter was shown to Mr. Everitt, immediately on its receipt.

Q. Have you that letter?

A. I have.

Q. Where is it?

A. Here.

(Letter produced by the witness and offered in evidence by Mr. Otterson, marked "No. , October 16th, 1879, R. A. W.," being letter of H. E. Townsend, dated June 9th, 1878, to the Hale & Kilburn Manufacturing Company. Mr. Mitchell objects to the offer in evidence.)

Q. Is this the letter you refer to?

A. It is.

Q. Is that the only letter you received from that quarter before acting in this purchase?

(Mr. Mitchell objects as there is nothing in this case in controversy concerning the Maine patent.)

A. No.

Q. Is that one of them?

A. There is another.

Q. Is this it? (Letter shown witness.)

A. Yes sir.

Q. Was this shown to Mr. Everitt?

A. Yes sir.

(Letter dated August 3d, 1878, from Henry E. Townsend to the Hale & Kilburn Manufacturing Company, offered in evidence and marked "No. October 16th, 1879, R. A. W."; offer objected to by Mr. Mitchell.)

Q. What was Mr. Everitt's reply when he was asked with reference to these letters, or consulted in reference to the Maine patents?

A. He refused to have anything to do about it, and also stated, or says: "I have known about that, long ago; long before you purchased my patent."

Q. Are you talking about the Maine patent?

A. The Maine and Stark patents.

Q. I am talking about the Maine patent—he refused to have any thing to do with it?

A. Yes sir; he refused to have anything to do with it.

Q. What else did he say?

A. Oh! he laughed, and said "let them fire away," or some words to that effect.

Q. What did he say about the patent itself, if he said anything?

A. He said he knew all about it; that it was not good for anything, and that he would not have anything to do with it.

Q. Well, you afterwards purchased it?

A. Yes sir; at quite an expense.

Q. Did he participate in that purchase?

A. He did not.

Q. Who proposed the sale of the Stark patent to your firm, and when was that proposed?

A. Mr. Stark himself. That was in the early part of February, 1878.

Q. How soon after that was that reported to Mr. Everitt, if at all?

A. Immediately.

Q. What investigation was made as to the validity or novelty of the Stark patent?

A. An investigation by ourselves, do you mean?

Q. By yourselves, or others for you.

A. We were fully convinced.

Q. What investigation was made either by yourselves or procurement, to test the validity, or usefulness of the Stark patent?

(Objected to by Mr. Mitchell unless it is proposed to connect Mr. Everitt with the investigation.)

A. Well, we decided that the stark patent was not really of itself, available; that is, it could not be made a saleable article, as it stood, as there was no weights in his patent, and the bedstead had to be lifted by main strength. Nevertheless, it was a clear point in our minds that the Everitt patent infringed the Stark patent.

Q. Was this reported to Mr. Everitt or not?

A. It was.

Q. Do you know whether or not he was requested to participate in the purchase of the Stark patent?

A. I know he was, by Mr. Kilburn and myself, quite a a number of times, but he would always remark that he knew

all about the Stark patent long before we purchased his patent, and would have nothing to do with it, that it was good for nothing.

Cross-Examined.

By Mr. Mitchell.

Q. When did you first hear of Stark's patent?

A. In the early part of February, 1878.

Q. Who told you about it?

A. I heard it first through my brother, J. Warren Hale.

Q. What did he tell you?

A. He told me that Stark had been in there, and informed us of the infringement on his patent.

Q. What is your brother's business?

A. He is Secretary of our firm, or company. He said he also told Mr. Everitt that Stark had been there and that he claimed we infringed on him.

Q. Did he tell you he had seen Stark?

A. He did.

Q. Did he tell you he had sent for Stark to come there?

A. He did not, because he did not send for him.

Q. How do you know he did not?

A. I know it as much as I know anything, that he did not.

Q. How do you know?

A. Because I take his word, as a brother, that he never did.

Q. Did you ask him if he sent for Stark?

A. No sir; because I know he never did, or no one else about our concern.

Q. Did he ever tell you he had not sent for Stark?

A. He never said anything about it.

Q. Then how you know he did not, because you would take his word for it, and yet he never gave you any word about it?

A. It is rediculous to think of such a thing. If he had done such a thing I would have known it.

Q. But you said, a moment ago, that you knew it because

you took his word for it, and yet you say he never told you anything about it. How do you account for that?

A. I say he never did to the best of my knowledge and belief.

Q. That is better. Did he tell you how he first came to hear of Stark?

A. He said that Stark had just came in that day.

Q. Did he tell you how he first came to hear of Stark?

A. No he did not.

Q. Did anybody ever tell you; did anybody in your firm ever tell you how he first heard of Stark?

A. We all heard of it from the same source, at the same time.

Q. You could not have done so?

A. Well, except my brother; Mr. Kilburn and myself, he informed both of us at the time, that Mr. Stark had been there that day.

Q. Are those all of the company that there are—yourself, Mr. Kilburn, and your brother?

A. No sir; my father.

Q. Then, exactly what did you mean when you said that all heard of it at the same time?

A. Well, I meant Mr. Kilburn and myself.

Q. You did not mean, when you said, "we all," to include all the members of the company?

A. No, not all of them.

Q. Is it within your knowledge, or have you heard any of them say, that any one of them sent for Stark?

A. I never did.

Q. Have you no knowledge that your firm, or somebody representing you on your behalf, sent to Kansas, to bring Stark on East?

A. I have no knowledge, whatever, of any such transaction, or any one, either connected with our firm or outside, ever sending for Mr. Stark.

Q. Where did Mr. Stark live when he was at home?

A. Topeka, Kansas, is his address. I do not know whether he lives there now or not.

Q. Give the names of the various officers of your concern, who have authority in its management?

A. Mr. C. Kilburn, who is our president; Warren Hale, my father, is vice-president; my brother, J. Warren Hale, is secretary; Mr. Artemus Kilburn has an interest—He works in the factory and superintends it.

Q. Is there another superintendent?

A. Yes sir.

Q. What is his name?

A. His name is Samuel M. Newcomb.

Q. Where is he occupied?

A. In the factory.

Q. How?

A. As general superintendent.

Q. Where is the factory?

A. The factory is in the rear of our store, 48 and 50 North Sixth Street.

Q. Where is Artemus Kilburn occupied?

A. He is occupied in the lumber department of our factory; the lower part of it. We have also an assistant superintendant.

Q. What is his name?

A. I have forgotten his first name; his name is Mr. Folger.

Q. Who made a bargain with Stark for the purpose of purchasing his patent?

A. Mr. Kilburn and myself.

Q. Did you take any part in the negotiation, or did Mr. Kilburn make the bargain?

A. Mr. Kilburn did the most of the talking.

Q. Were you present during the whole time to hear all that was said?

A. I was present during most of the time; I did not hear all that was said

Q. When was the bargain made—I mean when you first made the bargain with him?

A. I think it was the latter part of February, 1878.

Q. Where was that?

A. In our office.

Q. In Philadelphia?

A. Yes sir.

Q. Who was present at that bargain?

A. Mr. Kilburn and myself, and my brother might have been; I could not say positively.

Q. Do you mean your brother, J. Warren Hale?

A. Yes sir; I have but one brother.

Q. What was the bargain?

A. Mr. Stark agreed to sell us his patent for $1,000.

Q. Were any writings made?

A. Not then.

Q. Were there writings subsequently made?

A. Yes sir; there was an assignment subsequently made.

Q. Where was that writing made?

A. I think that was made in Washington.

Q. By whom was it drawn?

A. By Colonel R. Mason, of that place, a patent attorney of Washington?

Q. Who employed him to draw that assignment?

A. I could not say whether it was Mr. Kilburn or Mr. Stark.

Q. Did Colonel R. Mason do that as the attorney for your manufacturing company?

A. He had done prior business for us in regard to other patents.

Q. And subsequent business too?

A. I think so.

Q. Did he examine Stark's patent and give you an opinion upon it before you bought it?

A. I think he did.

Q. He was employed by your company to do so, was he not?

A. Certainly.

Q. When Stark made the bargain you say no writings

were made. What agreement was made between Stark and Kilburn at the time as to the time of making the writing?

A. I could not say as to that. Mr. Kilburn and Mr. Stark had that in charge.

Q. You said that you heard most of what was said; did you hear nothing about it?

A. I did not hear all.

Q. Did you hear nothing about that?

A. No sir.

Q. What agreement was made between Mr. Kilburn and Mr. Stark at the time in regard to the payment of the $1,000? Did you hear that?

A. Yes sir; we paid him on account.

Q. But what agreement was made in regard to the payment of the balance?

A. We were to pay him as he required it; as he wanted it.

Q. Were you to pay him without any assignment from him?

A. No; we only paid him a portion first.

Q. How much did you pay him?

A. I think it was a hundred or two dollars.

Q. Did you take a receipt?

A. We did.

Q. Have you that receipt?

A. It is among our receipts, and that receipt has been produced; we gave him our due-bill.

Q. I am not speaking of the due-bill; you did not give him a due-bill for the money you gave him at the time, did you?

A. No; for the balance.

Q. I am speaking of the receipt for the money you paid him at the time; where is it?

A. I presume it is in our receipt-book.

Mr. Mitchell—I call upon Mr. Otterson for the production of that receipt.

Mr. Otterson—That receipt has been produced upon call by Mr. Otterson, and offered in evidence long ago.

Mr. Mitchell—That may be so, but this investigation has been going on for a long time, and I have not been present at all the meetings. I think I may ask indulgence if I forget what has been offered in evidence.

(To the Witness)—What was it that Mr. Kilburn told Mr. Stark to do at that time with regard to making an assignment of that patent?

A. I really could not answer that question.

Q. Did your firm know of Stark's patent before you saw him or before your brother told you that he had seen him?

A. Never.

Q. And you never heard of it?

A. Never heard of it, or had the slightest idea of its existence.

Q. Did you or Mr. Kilburn buy the patent from Mr. Stark the first time you saw him?

A. I think not. I think we had several interviews.

Q. Did you have this opinion from Colonel Mason, of Washington, before you closed the bargain with Stark?

A. Just at the last moment I think it came.

Q. Was it in writing?

A. No sir; I think it was a telegraph dispatch.

Q. Have you that dispatch?

A. I have not.

Q. Where is it?

A. I could not tell you.

Q. Do not you keep your telegraph dispatches?

A. It may be filed away in our letters; I will not say positively.

Q. Is it not the habit of your firm to keep letters and telegraph dispatches on business?

A. I do not know about their filing away telegraph dispatches, but I will not say that they do not.

Mr. Mitchell—I call upon Mr. Otterson to produce that telegraphic dispatch.

(To the Witness)—Was the due-bill drawn up and signed

at the same time that you paid Mr. Stark one hundred dollars or two on account?

A. I cannot say as to that.

Q. Did you give Mr. Stark a due-bill before you got an assignment of the patent?

A. We did, I think.

Q. When did Mr. Stark go to Washington; how long after the interview with you and Mr. Kilburn?

A. What interviews do you mean?

Q. I mean the interview when you bought the patent, and gave him one hundred dollars or two on account?

A. It was a number of days after; I cannot exactly remember the time.

Q. Did he go to Washington by your direction, or the direction of your firm or company?

A. I think he went down there with Mr. Kilburn.

Q. Mr. Kilburn went with him?

A. I think so.

Q. Did you ever see the assignment that was drawn at that time?

A. Yes sir; I saw it. I can tell you at about what date.

Q. I would rather you would not refresh your memory unless by a memorandum made at the time, when it would be proper to do so?

A. I have here the assignment itself.

Q. Refer to it, please?

A. It was about the 1st of January, 1879, that I first saw that assignment.

Q. Do you know whether it is the only paper that Mr. Stark ever signed, assigning this patent to your company?

A. It is.

Q. Do you say so positively?

A. I do. To the best of my knowledge and belief it is the only paper.

Q. You mean to say, then, that it is the only paper you ever heard of?

A. I mean to say it is the only paper, the only assignment we ever had from him; we never had but this one.

By Mr. Otterson.

Q. That you know of?

A. Yes sir; I know nothing of any other one.

By Mr. Mitchell.

Q. You say the first you ever saw of this paper was about the 1st of January of this year?

A. Yes sir; about.

Q. Where was it when you first saw it?

A. It was received in the mail; through the mail.

Q. From whom?

A. From Colonel R. Mason; it was left in his charge; in trust, as I understand it.

Q. What was said between Mr. Stark and Mr. Kilburn, in your presence, as to the re-issue of this patent?

A. All that I know about that is that it was to be re-issued.

Q. You mean that it was so agreed between Mr. Stark and Mr. Kilburn?

A. Yes sir; we bought it with that understanding, that Stark was to have it re-issued, which was done.

Q. Where is your brother?

A. He is at the office.

Q. When did you next hear anything about Stark and the assignment of his patent, after Mr. Stark and Mr. Kilburn had the conversation that you speak of?

A. Let me understand that, please.

Q. You say that you were present at a conversation between Mr. Kilburn and Mr. Stark, at which Stark made a bargain for the sale of the patent for one thousand dollars, and something was paid to Stark on account and a due-bill was given to him for the balance; when did you next hear of Mr Stark and his patent after that?

A. I saw Mr. Stark frequently.

Q. When next; when did you see him next after that?

A. It might have been a few days; it might have been longer or shorter; he was in quite frequently.

Q. Had he been to Washington in the meantime?

A. I do not know whether he had been to Washington in the meantime or not.

Q. Did you ever hear anything about it; about what he did when he went to Washington? Did any of the defendants ever tell you anything that took place when Stark went to Washington?

A. Nothing, except that he made an assignment.

Q. And you say that this paper, which is dated the 7th of March, 1878, is the only paper resembling an assignment that Mr. Stark ever gave to your company, of which you have any knowledge?

A. Yes sir.

Q. Let me look at the re-issue of the Stark patent?

A. This (patent produced) is the Stark patent; it is not in evidence, but a certified copy of it is.

Q. (Referring to the patent.) Who is J. B. Kilburn?

A. He is one of our bookkeepers.

Q. Were you present when this specification for the re-issuing for this patent was written?

A. I was not.

Q. Now were you present when it was signed by Mr. Stark?

A. I was not.

Q. Where was it signed?

A. I think it was signed in our office, where the names John B. Kilburn and Owen D. Roberts appear.

Q. Do you know who prepared it?

A. Col. R. Mason.

Q. Who paid Mr. Mason for this service?

A. Mr. Stark.

Q. Are you sure of that?

A. I am.

Q. How do you know he did?

A. Well, I know, for one reason, that I found no record of it on our books, and Mr. Kilburn told me that he (Stark) was to pay for it.

Q. Which Mr. Kilburn?

A. Mr. C. Kilburn.

Q. Had you bought the patent at the time this specification for a re-issue was signed in your office?

A. We had made that agreement.

Q. And paid something on account?

A. Yes sir.

Q. And given Stark a due-bill?

A. Yes sir, I think we had.

Q. Had you anything from Stark to show that he had sold you his right, at the time—any paper?

A. No sir; not that I know of.

Q. Do you know what Mr. Stark signed?

A. That is the only assignment I ever saw.

Q. Do you know what Stark wrote and signed, in Washington, under the advice of Mr. Mason?

A. I do not.

Q. Did Mr. Cheney Kilburn never tell you that there was another agreement, prior to this?

A. He never did.

Q. Why did you conceal from Mr. Everitt the fact that you had purchased this patent from Stark?

A. At that time?

Q. At any time?

A. I do not know as we had any particular reason.

Q. You did conceal it from him, did you not?

A. After we purchased it I won't say that we did or did not.

Q. Do you not know that you did?

A. I did not tell him. I did not inform Mr. Everitt. Whether anybody else did I am not able to say.

Q. Were you present at any interview between Mr. Everitt and Mr. Cheney Kilburn, in which the question was asked, and it was denied that your firm had bought it?

A. No sir; I was not. I never heard any such denial.

Q. Do you not remember, in my office, when Mr. Mason was there, and Mr. Connelly was there, and Mr. Cheney Kilburn was there, and you were there, and I was there?

A. I remember that meeting.

Q. And that it was suggested that Mr. Cheney Kilburn, or your firm, had purchased this patent, and it was indignantly denied?

A. I heard Col. R. Mason say that there was no record of it at the patent office in our name.

Q. Is that all that you heard said,—did you not hear it denied?

A. I did not hear a positive denial.

Q. Why did you have this suit commenced by Stark against yourselves, after you had bought his right and held a full assigning of his patent?

A. One reason was that it was to test the patent.

Q. Did you not know that efforts were being made on your behalf, during the whole time it was going on, to induce Mr. Everitt to reduce his royalty?

A. We were always in hopes—

Q. Please answer the question. Did you not know that efforts were being made on your behalf, during the whole time it was going on, to induce Mr. Everitt to reduce his royalty?

A. I think something was said about it.

Q. Who instructed Col. Mason to file that bill in the name of Stark, in the circuit court of the United States, against you?

A. I think it was Mr. Kilburn.

Q. What was the purpose of the interview I have already spoken of, where the gentlemen I have named were present, together with yourself?

A. To see if we could not make some arrangement with Mr. Everitt.

Q. What arrangement did you offer to make with him, or what was offered on your behalf?

A. I do not know of any offer.

Q. Do you not remember that it was offered to divide the royalty evenly between Mr. Stark and Mr. Everitt, the royalty which Mr. Everitt was entitled to under the agreement?

A. That may have been.

Q. What did Col. Mason say at that meeting with regard to his position; did not he say he represented Mr. Stark?

A. He did.

Q. Did not he speak of that as a proposal that Mr. Stark might probably be willing to accept?

A. I think he did.

Q. Did he, in fact, represent Mr. Stark at that time with regard to that proposal?

A. Well, he did not.

Q. Do you remember what was the average amount of Mr. Everitt's yearly royalty from your Company, or what was his monthly average—about. I do not care to be very particular?

A. I will have to guess at it.

Q. As nearly as you can. It would be a guess from a person who must have knowledge.—Are you not the treasurer of your company?

A. As near as I can guess, it was about two thousand dollars a year for the last two or three years.

Q. That was the amount that you actually paid him or credited him with?

A. Yes sir; it was about that. It might have been more and might have been less.

Q. Have you the opinion for which the sum of $162.50, spoken of in your testimony in chief, was Mr. Everitt's half?

A. I have it with me.

Q. Produce it please?

A. (Producing two opinions) There are two of them.

(The two opinions offered in evidence by Mr. Mitchell; the opinion in Maine vs. Everitt, by George Harding, being marked "No. Oct. 16th, 1879, R. A. W;" the opinion of Charles B. Collier, being marked "No. Oct. 16th, 1879 R. A. W.")

Adjourned until Monday next, October 20th, 1879, at 3 p. m.

Philadelphia, Monday, October 20, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Mitchell, Mr. Otterson, and parties.

Cross-examination of Henry S. Hale resumed.

By Mr. Mitchell.

Q. (Receipt-book shown witness) Please show me the receipt in this book that Mr. Stark gave you, when the patent

was first bought from him, for the one hundred or two dollars you paid him on account?

A. I answered that question.

Q. Find the receipt.

A. (Receipt produced.)

Q. Point out the receipt.

A. As I said before, I find no receipt in this book for $200.00.

Q. One or two you said?

A. Well, a hundred or two dollars.

Q. What receipt is that you have found?

A. There is a receipt here for one thousand dollars, dated May 8th, 1878, and also a due-bill for $800.

Q. The due-bill is dated the 23d of February, 1878, is it not?

A. Yes sir.

Q. Did he give you this due-bill at the same time that you paid him the money you speak of, when you first bought the patent from him?

A. I could not say positively whether it was at the time, or not.

Q. Where is the receipt he gave you at the time?

A. I suppose it was in the receipt-book, if he gave us any, but not finding it there, of course, he did not give us any to my knowledge.

Q. Who paid Mr. Stark this money that you have spoken of—I mean who actually handed him the money?

A. Now, I could not say whether it was myself or Mr. Kilburn?

Q. Did you give him a check, or money?

A. I could not say as to that.—I think it was the money.

Q. Mr. Stark was a stranger to you, was he not?

A. Comparatively so.

Q. Do you pay out as much money as that to strangers, without taking any receipt or voucher for it, whatever?

A. No sir; not as a usual thing. Mr. Stark handed over his patent papers, and we only paid him part of the agreement.

Q. I understood you to say in your cross-examination at the last meeting that he then signed no paper except the receipt. Is that correct.

A. I could not say now that he signed a receipt.

Q. Did he sign any other paper beside a receipt?

A. No sir; not to my knowledge.

Q. Then you paid him $200., I presume. Because the due-bill is for $800,—without taking any assignmet, receipt or other writing?

A. I say, to the best of my knowledge, we did.

Q. Have you looked for the receipt?

A. I have.

Q. Anywhere, except in the book, now?

A. No sir; because all of our receipts are put in that book.

Q. Do you keep a book, or an account of any book, of expenses for patents?

A. No sir; that is, no special book.

Q. Do you keep any special expense account for that purpose?

A. No sir.

O. Would the payment of two hundred dollars to Mr. Stark on that occasion be shown in your books, anywhere?

A. It ought to be shown in the cash-book.

Q. Please have the cash-book, which contains this entry, before the examiner at the next meeting?

A. I will make a little explanation there, if you will allow me: The receipt that I stated at the last meeting was this one for the one thousand dollars that I had reference to.

Q. In whose hand-writing is this due-bill?

A. My own.

Q. Is that your signature, as treasurer (signature shown witness.)

A. Yes sir.

Q. Do you remember the occasion on which you gave him the due-bill?

A. I remember it was at that time.

Q. It was the same time that you paid him the two hundred dollars?

A. I could not say whether it was the same day, or the next day. I really could not say, whether it was at the same time or not.

Q. Did you give him the due-bill, before he made the assignment to you?

A. Yes sir; to the best of my knowledge, we did.

Q. What writing did he give you at the time you gave him the due-bill?

A. He did not give us any that I know of. He handed over his patent papers.

Q. Then, as a matter of fact, Mr. Otterson was mistaken at the last meeting when he said that the receipt which you spoke of had been in evidence long ago?

A. He was, I think. Mr. Otterson meant this receipt-book, or that receipt for the $1000. I meant that receipt.

Q. What improvements were made by your firm, or any of them, or any person represented by you now, to this process of making a folding-bed?

A. What improvements; from the commencement, do you mean?

Q. Yes sir.

A. There was an improvement made by Harrison W. Curtis.

Q. Was he the inventor?

A. Yes sir; he was a member of our firm at that time.

Q. Mention the names of the inventors, please?

A. And Samuel M. Newcomb. He is now our superintendent, and Mr. Cheney Kilburn and myself.

Q. Are those all?

A. I think that is all.

Q. Are those all the patents you made for manufacturing the folding bed?

A. Yes sir; I think it is—for the improvements.

Q. Were there any improvements made by a man named Stevens?

A. Yes; he made several improvements.

Q. Do you not hold them now, or claim to hold them?

A. We do; but we did not at that time.

Q. When did Mr. Stevens make these improvements?

A. That was a good while ago; I cannot tell you when it was.

Q. Have you the patents for them?

A. No sir.

Q. They have been patented?

A. No sir; I bought the improvements of Mr. Stevens, and in the writing that he gave me he agreed to sign the application for a patent, which he afterward utterly refused to do; and he left Philadelphia all of a sudden one day—in other words, he ran away, and we could not find him, and I have not seen him to this day. Nobody knew where he had gone to.

Q. When was this; before or after you bought Stark's patent?

A. Well, I could not say whether it was before or after. It might have been after, I won't be positive. I could not say without looking it up.

Q. Have you any memorandum here by which you could look it up and refresh your memory as to time?

A. No sir.

By Mr. Otterson.

Q. Here, or at the store, I suppose Mr. Mitchell means, have you anything which will enable you to find out the date?

A. I can find out, I think, in the city. Mr. Howson has the papers, I think, which he drew up then for Mr. Stevens to sign.

By Mr. Mitchell.

Q. Have you the models which Mr. Stevens made of his improvement?

A. Yes sir; I think I have one or two.

Q. Will this help you any (due-bill in receipt-book, dated March 16th, 1878, to Elisha B. Stevens, for $100, on demand. Signed H. S. Hale, treasurer, shown witness)?

A. I do not think that will. I think that referred to Childs' chariot chairs. It was signed before August 9th, 1878.

Q. Will this give you any assistence (witness shown receipt in receipt-book, signed E. B. Stevens, dated February 27th, 1878)?

A. No sir; I think that relates to child's chairs also.

Q. Was Mr. Stevens regularly in your employ?

A. He had been, and I think he was then travelling for us and selling some goods.

Q. Did you have dealings with him as late as the latter part of July, 1878?

A. We may have had.

Q. Did you not get models from him, or by his order, as late as that, relating to improvements on this folding bed?

A. It may have been about that time; I rather think it was.

Q. Who is Mrs. Kunzman?

A. I don't remember the name.

Q. Did you ever see that paper before (paper shown witness)?

A. Never! never.

Q. Never?

A. Never; I could say that a hundred times.

Q. Did you, or your firm ever go or send there, to the address mentioned in that paper and get the models referred to?

A. I went there myself and got the models. I had a written order from Mr Stevens for a person, whoever the name is, to deliver to me certain articles, which she did.

Q. The name is Mrs. Kunzman, 606 Spruce street?

A. That is the name then?

Q. Where is the written order?

A. I could not say; I think I delivered it to that lady.

Q. When did you get those models?

A. I got them about that time.

Q. About the latter part of July?

A. I could not say positively when it was.

Q. What was Mr. Stevens employed by your firm to do; did you employ him?

A. At one time he made those child's chairs—

Q. Excuse me! Did you employ him? Answer that first, and then we will go to the other?

A. I did not, personally.

Q. Who did employ him?

A. Mr. Kilburn.

Q. Do you mean Mr. Cheney Kilburn?

A. Yes sir.

Q. Do you know what he employed him to do with respect to the folding-bed?

A. I do not know anything about the folding-bed part of it.

Q. Was it before or after you got these models that Mr. Stevens left the city, in the way you have mentioned?

A. It was after.

Q. Do you say you had no negotiations at all with Mr. Stevens about the folding-bed, about Everitt's patent?

A. No sir.

Q. And no correspondence with him on the subject?

A. Not that I remember.

Mr. Mitchell.—I ask Mr. Otterson to produce the telegraphic dispatch from Col. Mason that I called for at the last meeting.

Mr. Otterson.—(producing three papers.) These are the only two telegrams and one letter from Mr. Mason to the defendants. The first telegraph is dated February 18th, 1878; the second, February 19th, 1878.

Mr. Mitchell.—I offer in evidence the following telegram:

"Washington, D. C., February 18th, 1878.

Hale & Kilburn Manufacturing Company, Philada.:

Thistles fifty-nine patent anticipates principal features. Stark not very important. Will write. Don't pay much.

R. Mason."

I also offer in evidence the following telegram:

"Washington, February 19th, 1878.

Hale & Kilburn Manufacturing Company, Phila.:

H. F. Nover holds license for Philadelphia under Stark. Advise securing Stark's patent. R. Mason."

I also offer in evidence the letter dated February 19th, 1878. (Marked "No. 48, October 20th, 1879, R. A. W.")

Q. (To the witness.) Did you go to Washington about this matter, at all?

A. No sir.

Q. Which members of your firm went, besides Mr. Cheney Kilburn?

A. No one, that I know of.

Q. He went?

A. Yes sir.

Q. Did Mr. Stevens go with him?

A. Not that I know of.

Q. Who attended to the advertising of your Company?

A. Usually Mr. Roberts and myself. I attended to the greater part of it.

Q. Who put this advertisement in "The Trade Bureau"? (Advertisement shown witness.)

A. I think Mr. Roberts did that.

Q. Who put this advertisement in "The Upholsterer and Carpet Reporter," of Boston, October 4th, 1879?

A. I think he did that at the same time. I think those two advertisements were made up at the same time.

Q. Are not these (three wood-cuts shown witness) three pictures of folding-beds in the "Upholsterer" the same as you had advertized for the last five years?

A. The same cut, but the larger ones at the bottom are new ones.

Q. How about the automatic folding-crib?

A. That is a new one.

Q. Who occupies your branch store at 706 Broadway, New York?

A. Mr. John S. Lindsey is manager for us there.

Q. Who is your manager at 535 Washington street, Boston?

A. Mr. N. L. Stebbins runs the store entirely at his own expense.

Q. Who occupies your branch store at 182 West Baltimore street, Baltimore?

A. Mr. D. C. Burson occupies that, in the same way; he runs that store in the same way.

Q. Why did you advertise two or three furniture companies in Chicago as your branch stores?

A. The only way I can account for that is that it is a mistake. That ought not to have been there, because they are not branch stores. They have no interest whatever with ourselves.

Q. How long a time did that mistake appear in the public papers as an advertisement?

A. The first time I ever saw it was when Mr. Mitchell showed it here, the other day, in the office.

Q. Do you know how long a time it was advertised?

A. Not a great while, I could not say positively.

Q. Were the arrangements that you had with the Toby Furniture Company substantially the same as you had with Mr. Stebbins and the furniture company in Baltimore?

A. They were a little different.

Q. Wherein were they different?

A. The Toby Company order and buy the goods right out, and pay us for the same every sixty days; send us a check for the goods, whatever they may be, no matter what amount it may be; and with the Boston store and the Baltimore store we send the goods on consignment.

Q. Will you let me see the letter of April 10, 1878, from Colonel Mason?

A. Yes sir. (Letter produced.)

Q. Where is the envelope in which that letter came?

A. I do not know where it is.

Q. Did you show this letter to Mr. Everitt?

A. I did; on the morning of its arrival.

Q. Did you have any conversation with him about the envelope it came in?

A. No sir; I do not remember that any conversation was had about the envelope.

Q. Did he not ask for the envelope?

A. I do not remember that he did.

Q. Did he not ask you to keep the envelope?

A. I do not remember of his saying anything of that kind. I do remember of his telling me to preserve the letter, which I did.

Q. Did not he ask you to preserve the envelope?

A. No sir; not to the best of my knowledge. We put our envelopes into the waste-basket.

Q. How did Mr. Mason come to write your company this letter, when you yourselves were the owners of the Stark patent and his clients?

A. Mr. Mason did that entirely on his own responsibility. I would like to make a little explanation here.

Q. Certainly; by all means.

A. We acted in bringing that suit entirely under the advice of Mr. Mason; and, furthermore, I will say that Mr. Otterson did not know anything about it at the meeting in your office.

Q. I never thought he did; I knew all about it myself, but I knew also that he was ignorant. I knew then all about it, as much as you did.

A. We acted entirely under Mr. Mason's advice.

Q. How did Mr. Mason come to write you that he was prepared to negotiate for terms of license for you to use Stark's patent at the time when he, as your counsel, knew you were the owners of the patent?

A. I could not tell you how he happened to do that.

Q. What passed between you? What did you tell Mr. Everitt about this letter when you showed it to him?

A. I told him I would preserve it. He asked me for a copy of it that afternoon or the next day, and I told him I would hunt it up; I had already laid it aside, and have a copy of it made for him, which I did.

Q. Why did Mr. Mason tell you you were infringing the

patent of his client, A. Stark, when he knew perfectly well it was your patent, and not Stark's?

A. He must have had an object in doing it; I do not know what it was.

Q. What did you understand when you first saw this letter. Did not you know what he meant?

A. Mr. Kilburn and myself had tried our very best to do something with Mr. Everitt before we purchased the Stark patent, and he refused to have anything to do with us; said that it was good for nothing; that he knew all about it long ago, long before we purchased his patent of him, and Mr. Mason brought that suit, I suppose, thinking, perhaps, it might have some bearing on Mr. Everitt.

Q. I am not speaking of the suit; I am speaking of the letter which you showed to Mr. Everitt as soon as you got it; why did you show it to Mr. Everitt?

A. Because Mr. Mason told us to show it to him.

Q. Did you tell Mr. Everitt that you had bought Stark's patent?

A. I did not tell him.

Q. What did you say to him when you showed him this letter; at the time you showed it to him; I do not mean about keeping it, but at the time you showed it to him what did you say?

A. I do not remember what was said; I just handed it to him, and he read it and told me to preserve it.

Q. Is the bed called "No. 16 bed," made by your company, made under a patent?

A. Yes sir.

Q. Did you have the date of the patent put upon each manufactured article, according to law?

A. We endeavored to do it.

Q. Did you or not have Mr. Everitt's patent put on that bedstead always?

A. No sir.

Q. Did you have it always put on the No. 16 beds up to the first of this year?

A. We had it up to a certain time; the time I could not say when we left it off.

Q. Was it not after this suit commenced?

A. It might have been, although the packer had orders to leave it off.

Q. When did you give him those orders?

A. When we first commenced to make them.

Q. When did you first commence to make them?

A. I could not tell without referring to the books.

Q. Refer to the books and tell?

A. (Referring to the books), About in the first part of 1878; I find one in April.

Q. Did you not have the date of Mr. Everett's patent marked on No. 16 beds from that time up to the beginning of this year?

A. I could not say.

Q. Did not you yourself give orders that it should be done?

A. I gave order that it should be left off.

Q. You did?

A. Yes sir.

Q. To whom did you give orders?

A. To our packer.

Q. What is his name?

A. Hugh McComb.

Q. Do I understand you to say that your 16 beds had not the date of Mr. Everitt's patent upon them?

A. No, I did not say that.

Q. Exactly; what did you say?

A. I say up to a certain time they had dates on.

Q. Can you say when that time was?

A. No, I cannot.

Q. Can you find out and let me know?

A. I will try to.

Q. As to No. 11, did not that have the date of Everitt's patent upon it?

A. I think so, up to a certain time.

Q. Did not No. 18 have the same?

A. Up to a certain time; yes sir. We had the stencil-plate for the whole number of patents.

Q. Did it have the date of the improvements you have mentioned on it also—these bedsteads?

A. Yes sir.

By Mr. Otterson.

Q. And you used that always universally, in a uniform manner?

A. Yes sir; we used it always universally, and that is why it was not left off when it ought to have been.

By Mr. Mitchell.

Q. How about beds No. 10 and 17?

A. They are in the same order.

Q. They all had the date of the patents on them, up to a certain time?

A. Yes sir; we do not make No. 10 beds any more.

Q. When did Mr. Kilburn and Mr. Everitt have any talk about Stark's patent; before or after this letter from Col. Mason?

A. It was before.

Q. How long before?

A. It was the first part of February, 1878.

Q. Where were they when they had that conversation?

A. In our office.

Q. Who was present?

A. I was present.

Q. Any one else?

A. My brother was in and out quite frequently. I do not remember of any one else being there.

Q. Was it on more than one occasion?

A. Yes sir; several.

Q. When was the first occasion—was it before or after you had seen Stark?

A. It was after.

Q. Was it before or after Mr. Kilburn had been to Washington about it?

A. It was before.

Q. Was it before or after you had bought Stark's patent?

A. It was before.

Q. Tell what took place; what did Mr. Kilburn say?

A. I cannot repeat all that was said, there was so much said, but Mr. Kilburn informed Mr. Everitt that Stark was here, or had been here, and that Stark offered to take $1,000 for the patent.

Q. Do you recollect that Mr. Kilburn told Everitt that?

A. Yes sir.

Q. At that time?

A. Yes sir.

Q. Go on and tell what was said?

A. First, he asked if he would not purchase it, or do something about it. Mr. Everitt refused; said it was good for nothing; that he would not have nothing to do with it, and that he knew all about it long ago, long before we ever purchased his patent.

Q. Were you not present on one occasion when Mr. Cheney Kilburn said that Stark wanted $30,000 for his patent?

A. I do not remember any such conversation.

Q. Do you remember any such remark made by Mr. Cheney Kilburn in Mr. Everitt's hearing?

A. No sir; I do not. I do not think he ever said anything of the kind. As I said before, I did not hear all that was said at those meetings.

Q. Did not Mr. Kilburn want Mr. Everitt to give Stark five out of his seven per cent. royalty?

A. There might have been something said about that. I cannot say positively.

Q. Do you not remember that that was said?

A. I remember there was something said about dividing royalty, or something to that effect; but Mr. Everitt always refused, and would not have anything to do with it. We could not get the slightest offer out of Mr. Everitt, in any way, shape or form—never was able to.

Re-examined.

By Mr. Otterson.

Q. Did you hear Mr. Kilburn say anything to Mr. Everitt about $30,000, with reference to any patent?

A. I really could not say. I will say this much—that there was a good deal said about the Maine patent afterward; and the Maine parties, in Boston, did ask $20,000 for their patent, at one time. Perhaps that is where he got his big figures from; I do not know.

Q. Did you tell Mr. Everitt that, or did Mr. Kilburn do it in your presence?

A. It seems to me there was something said about that; I could not say positively.

Q. Do I understand you to say that this interview you have just spoken of, between Mr. Kilburn and Mr. Everitt, was before you had seen Mr. Stark?

A. I do not think I said so; I did not mean to say so, if I did. It was after I had seen Mr. Stark.

Mr. Otterson: At this point I offer in evidence:

The model of Stark's patent (marked "No. 49, October 20th, 1879, R. A. W.")

I also offer the same model, with the corner pieces which extend the side bracket on the foot-board above the side-rail, or box, when it is closed, which make the Everitt patent. (The corner pieces marked "No. 50, A, October 20th 1879, R. A. W."), and ("No. 50, B, October 20th, 1879, R. A. W.")

Also the spring bed used in same. (Marked "No. 51, October 20th, 1879, R. A. W.")

Also the model of the Maine patent. (Marked "No. 52, October 20th, 1879, R. A. W.")

Also the model of the No. 16 bed. (Marked "No. 53, October 20th, 1879, R. A. W.")

(Also a copy of the record of the patent-office, under date of April 10th, 1879, referring to the application for the Everitt patent.)

Mr. Mitchell: (To Mr. Otterson.) What is the purpose of this offer?

Mr. Otterson: (To Mr. Mitchell.) We will discuss that one of these days.

(The offer objected to by Mr. Mitchell, as the evidence is not material to any issue before the Master. The exhibit marked "No. 54, October 20th, 1879, R. A. W.")

Adjourned until Monday next, October 27th, 1879, at 3 P.M.

Philadelphia, Monday, October 27th, 1879.

Parties met at the office of the Master.

Present.---The Master, Mr. Otterson, Mr. A. I. Philips, representing Mr. Mitchell, and parties.

Charles Howson sworn and examined.

By Mr. Otterson.

Q. You are a member of the firm of Howson & Son, are you not?

A. Yes sir.

Q. What do you call your profession—patent lawyers, are you not?

A. Solicitors of patents; patent lawyer is my own profession.

Q. Did you draw a contract between Mr. Everitt and the Hale & Kilburn Manufacturing Company?

A. I did.

Q. With reference to the Everitt folding bedstead?

A. With reference to a patent of Mr. Everitt's for a folding bedstead.

Q. In what shape was it brought to your attention, originally?

A. My recollection upon that point is that Mr. Henry S. Hale came to me to formulate, or put into proper shape, a contract which was already virtually concluded between his firm and Mr. Everitt with reference to the patent I mentioned.

Q. Is that (paper dated March 17th, 1874, signed Hale, Kilburn & Co., with receipt of same date for $75, signed by Elisha E. Everitt shown witness,) the paper he produced?

A. I cannot say that I recollect this paper—

Q. You do not recollect anything of this?

A. My answer was not complete,---although I find something upon the face of this paper which satisfies my mind that I had it before me. I refer to the words "impts lawsuits 1-2 ---1-2 receipts for rights sold," which I recognize as being in my handwriting.

Q. Who constitute your firm, please?

A. My father, Henry Howson, and myself.

Q. You prepared a contract?

A. Yes sir.

Q. State, if you please, what you knew at that time about the Stark patent, as it is called?

A. I am quite certain that I knew nothing at all about the Stark patent. No instructions were given to me to look into the question of any prior or other patent, but simply to put a contract into form, and to that my attention was confined.

Q. Have you ever known of the Stark patent?

A. I do know of the Stark patent, and, to the best of my recollection, my attention was first drawn to it within 18 months last past.

Q. Mr. Everitt says: "When Mr. Howson, their agent, went to draw the contract between the two parties, they and me, he said the patent would have to be re-issued---and for what reason? On the reason of the Maine's and the Stark's patents, he said,"—is that true, or is it not?

A. If, by Mr. Howson, Mr. Everitt referred to myself, it is certainly not correct.

Q. You knew nothing then of the Stark patent?

A. No sir.

(Cross-examination reserved.)

Henry Howson sworn and examined.

By Mr. Otterson.

Q. You are the senior of the firm of Howson & Son?

A. Yes sir.

Q. Solicitor of patents?

A. Yes sir.

Q. Do you know anything about this agreement? (The paper of March 17th, 1874, shown witness.)

A. I recollect this paper.

Q. Please state where it came from and what happened?

A. It was brought to me by Mr. Hale.

Q. Go on and state what you did with it, and whether you had any interviews with Mr. Everitt in reference to it?

A. I cannot state exactly what was done with the paper, immediately.

Q. What was the purpose of its being brought to you?

A. I think I handed it to my son, who attended to all agreements; I found the paper in a box on my table recently, within the last week or ten days.

Q. Is that the basis of the contract which was afterward prepared and executed between the parties?

A. That, I understand, was the basis of the contract which was drawn up by my son.

Q. Did you ever have any interviews with Mr. Everitt relating to the business?

A. Relating to the agreement, do you mean?

Q. Yes sir; relating to the preparing of that contract, and so on.

A. The interviews relating to the contract were held mainly with my son. I had something to say about two or three of the items.

Q. Did you require a re-issue to be applied for, before the contract was issued as it was executed?

A. Upon consulting with Mr. Kilburn—

Q. In the presence or absence of Mr. Everitt?

A. With Mr. Everitt, afterward.

Q. Just state what took place in the presence of Mr. Everitt in the presence of Mr. Kilburn?

A. I told Mr. Kilburn that it would be a very foolish thing for him to buy that patent and make a final agreement, unless Mr. Everitt signed the necessary re-issue papers. I prepared the re-issue papers.

Q. Did you confer with Mr. Everitt about it?

A. Mr. Everitt decidedly objected to signing, for a long time; finally he did sign them. (Papers produced.)

Q. Did you say, before the contract referred to between the parties was signed, "that the patent would have to be re-issued on account of the Maine's and Stark's patent"?

A. No sir.

Q. What was your reason for requiring a re-issue?

A. Under the laws that exist at present every application for a re-issue of a patent granted subsequently to the year 1870, must be signed by the inventor. I have had many instances of men buying a patent without the re-issue, and when they found it necessary to re-issue, the inventor demanded additional sums, and I was determined that should never occur in my office if I could help it. It is a precaution which I take, invariably.

Q. Did you know, at the time that contract was signed, of the existence of the Stark patent?

A. No sir.

Q. Did you learn of it afterward; and when, for the first time?

A. I do not recollect when I heard of it afterward. One day Mr. Kilburn came into my office and told me of it, but I cannot tell how long afterward. It may have been some months afterward.

Q. Then it is not true that you insisted upon the re-issue of the Everitt patent because of the existence of the Stark patent with the Maine's?

A. Certainly not. I knew nothing about it, for the reason assigned. I did not know anything about it.

Q. I understand you to say that you were called upon simply to formulate, as your son has expressed it, an agreement already in existence, and not to make an examination of the state of the art?

A. I was not employed to make an examination of the state of the art; on the contrary, I scolded Mr. Kilburn for signing that agreement without an examination.

Q. Did you have any interview, at all, with Mr. Everitt on the subject of this re-issue, either in the presence of Mr. Kilburn, or alone?

A. Mr. Everitt called on me, I think, twice; told me that there was no necessity for a re-issue, and did not want me to make an application for a re-issue, and seemed very anxious I should not make the application.

Cross-examined.

By Mr. Philips.

Q. Did Mr. Everitt ever ask you why you wished the re-issue?

A. I do not know whether he asked me why, but I know he knew why. He knows the reason.

Q. You stated that Mr. Everitt objected to signing the re-issue; did he explain to you the ground of his objection?

A. No sir; I never knew; I could not understand the reason. I think he said that the patent was good enough, or something of that sort.

Q. Do you remember when the re-issue papers were signed?

A. They were signed on the same day as the agreement, I think; I am not quite certain. If you will allow me to look at the papers I can tell. They were signed evidently on that day, I think, the 16th of April. (Referring to the papers.) They must have been signed on that day.

Q. Were those re-issue papers used?

A. No; they have remained in my possession ever since they were executed, with the understanding of all parties that they were so to remain.

Q. Why were they not used?

A. For the simple reason that subsequently it was discovered that the patent was about as good as could be got for the invention; in other words, that the invention was covered by the original patent as far as it could be covered.

Q. How soon after the signing of the contract was it found out that the patent was good?

A. I beg your pardon, I did not say that the patent was good. As good as circumstances would permit of.

Q. "As good as circumstances would permit of?"

A. A few days afterward.

Q. By what means was that discovered?

A. (Producing a paper) That is a letter from my clerk in Washington. I wrote to him that it was quite likely I might have to re-issue this patent, and to look at the file and find out somewhere near what the condition of the patent was, by an examination of the file. That is the reply I got.

Q. Was any opinion of a patent lawyer obtained upon Mr. Everitt's patent at the time of making the contract?

A. Not that I am aware of; certainly not in my office.

Q. Was not the opinion of Mr. Harding obtained upon Mr. Everitt's patent?

A. Really, I do not know.

Q. Did you ever hear that Mr. Collier gave a written opinion upon Mr. Everitt's patent?

A. No sir.

(The letter produced by the witness offered in evidence by Mr. Philips, and marked "No. 55, Oct. 27th, 1879, R. A. W," and further cross-examination reserved.)

Re-examined.

By Mr. Otterson.

Q. What is the paper that you have just produced?

A. It is a reply to a memorandum of my own to my clerk in Washington.

Q. Your inquiry was what?

A. I think my inquiry was that I might have, possibly, to re-issue the Everitt patent, and to look at the file and see what he could find there. That reply came.

Q. Does the reply refer to the Stark patent at all.

A. No sir; it was this paper which induced me to think that it would be hardly worth while to re-issue the Everitt patent. I would like to add that that is a step I always take when I contemplate re-issuing a patent.

Q. To have such an examination made.

A. Yes sir; and not a search of the state of the art.

Cheney Kilburn sworn and examined.

By Mr. Otterson.

Q. You are the president of the Hale & Kilburn Manufacturing Company?

A. Yes sir.

Q. Did you ever forbid Mr. Everitt examining the books of your concern?

A. No sir.

Q. What passed on that subject?

A. I put him off for a day or two.

Q. Refused him only for the time?

A. Yes sir; that is all.

Q. And then?

A. I left word with our head book-keeper that if Mr. Everitt came in to let him have the books.

Q. Did Mr. Everitt see you again on that subject?

A. I do not think he did.

Q. Then you do not know, of course, what passed, except from the report of the book-keeper?

A. That is all.

Q. (Exhibit No. 40, the letter of April 10th, 1878, shown witness) Were you present when that letter came to hand?

A. Yes sir.

Q. State, if you please, whether the date of it was ever altered in your office, to your knowledge?

A. It never was, to my knowledge.

Q. Do you know whether or not it was shown to Mr. Everitt?

A. It was; the very day it was received.

Q. Where?

A. At our office; our front office, as we call it.

Q. Was any question raised about the absence of the envelope?

A. Not in my hearing.

Q. Mr. Everitt says that the envelope was absent, and he wanted it; that you hunted for it and could not find it. Is that so, or not?

A. It is not so.

Q. He says that the envelope when found was marked "received at the Philadelphia post-office at six o'clock on the morning of the fifth of April." Is that true or not?

A. I do not know anything about that. We strip the envelopes off and put them in the waste-basket.

Q. Was it a subject of discussion between you, at all, when the letter was produced?

A. Not at all.

Q. Do you remember his telling you, or Mr. Hale in your presence, to be sure and preserve the letter and preserve the envelope?

A. I heard him say he wanted us to preserve the letter, but never heard him say anything about the envelope.

Q. Mr. Everitt says that you knew all about the Stark patent before you made your contract with him. Is that true or not?

A. Not true.

Q. When did you first know of the Stark patent?

A. When Mr. Stark came on.

Q. Do you remember about when that was?

A. That was the very first of February; it might be the last of January, 1878. I did not see Mr. Stark at that time. I got my information from Mr. Warren Hale.

Q. When did you first see him yourself?

A. It was several days after. I should say several days afterward. I do not recollect exactly.

Q. How soon after you first saw him, or heard of his being here, did you communicate to Mr. Everitt the fact of his presence or the fact of his visit?

A. At once. Immediately. In fact, Mr. Everitt knew it sooner than I did, because Mr. Warren Hale told Mr. Everitt. I was out of the store at the time Mr. Stark came in; but Mr. Warren Hale told Mr. Everitt that there had been a man there by the name of Stark, from the West, who said we were infringing on his patent. And that very afternoon I heard the same thing.

Q. Had you ever heard of the existence of the Stark patent before you heard of the visit of Mr. Stark?

A. Never in my life.

Q. What steps did you take when you learned of the existence of the Stark patent; what was the first step?

A. Well we tried to have Mr. Everitt—we looked into the matter a little, began to look it over, and made up our minds that we were infringing, and we tried to have Mr. Everitt do something. We tried to do something with him, and to see what was the best to do about it.

Q. Did you consult counsel on the subject of infringement?

A. I think we did.

Q. Who?

A. Well, I guess it was the old gentleman, Mr. Henry Howson. I am not satisfied we did, right off, for a day or two; but we were satisfied in our own mind when we came to look the matter up that we were infringing.

Q. Did you consult other counsel besides Mr. Howson?

A. Yes sir.

Q. Who?

A. We consulted Mr. Mason, of Washington.

Q. In consequence of your advices from Mr. Mason, what did you do to Mr. Everitt or say to him?

A. We told him there would have to be something done about it; that it was a plain infringement. He said it was good for nothing. He said he knew all about it long ago, long before he bought his patent. Said he, "That is good for nothing; I won't give one cent toward it; I knew all about it long ago. It is good for nothing."

Q. Well, you bought it finally?

A. Yes sir; we bought it.

Q. Did you tell Mr. Everitt what it could be bought for?

A. Yes sir.

Q. What?

A. One thousand dollars.

Q. Did you ever tell him it would cost thirty thousand

A. No sir; never.

Q. Did you ever tell him it would cost any other sum than one thousand dollars?

A. No sir.

Q. What sum did it cost?

A. It cost one thousand dollars.

Q. State whether that purchase was or was not in pursuance of the advice of counsel?

A. It was done under the advice of Col. Mason, of Washington.

Q. He had been counsel for you in other matters previously?

A. Exactly; yes sir. He said we would have to buy it or stop.

Q. In what connection did you use the term thirty thousand dollars, if at all, in connection with Mr. Everitt?

A. I used the term in reference to the Maine patents. The Maine's had two or three patents. Soon after we bought Mr. Everitt's patent, Mr. Everitt and ourselves thought we had better see what we could buy all the Maine patents for. Mr. Howson thought it would be a good idea to buy them up. So I went to Boston expressly to buy them. I saw Mr. Maine, and he would not sell them for less than $20,000—his two or three patents, whatever they were. After running along—well, in 1878, I think, they got incorporated with a company. They formed a company there. I think there was thirteen of them in a company.

(The testimony objected to by Mr. Philips.)

They got up a company, and got a re-issue, re-issued their patents, and they came on and notified us, you know, that we were infringing. I told Mr. Everitt; said I: "You well know that when it was in Mr. Maine's hands he asked us $20,000. The probability is that we shall have to pay $30,000, now it has got into this company's hands." That is the way of it, and Mr. Townsend, the president of that company, had been out here, was here along about that time, along about June or July, 1878, and Mr. Everitt saw the correspondence that passed between Mr. Townsend and myself.

Q. Was anything said to Mr. Everitt about assisting in buying the Maine patent?

A. Yes sir. He said they were good for nothing. He would not give one cent to let them snap their whip.

Q. State whether or not you were advised that it interfered with the Everitt patent, or the Everitt patent interfered with it?

A. We were; we were advised.

Q. By whom?

A. Col. Mason.

Q. Did you buy the Maine patent?

A. Yes sir.

Q. At what price?

A. I think it was $6,000.

Q. Did you tell Mr. Everitt?

A. I told him we had bought it. I do not know as I told him the price; I don't know as it was but five; I won't be certain.

Q. Did you ask him to contribute?

A. Yes sir.

Q. What did he say?

A. That he wouldn't give one cent; it was good for nothing.

Q. Mr. Everitt complains that for a year or more, from the commencement of business under this contract, he was not able to get any account from the firm of the number of beds sold. What is the truth on that subject?

A. I never knew but what he could get his account if there was any sold. There was a long time, we put in nearly a year, before we sold any. It was a long time; I could not say exactly.

Q. Was there any reason why he should not have an account?

A. I think about the time we got started he opened a store on Chestnut street. I think he was to pay about twenty-two hundred or twenty-three hundred dollars rent, and he done a very small business. and he was not able to pay the rent, and we paid it; advanced the money. He would come in

and get the money every month, and we would give him a check for the money, and I guess he was owing us for the course of two years, is my impression now.

Q. What do you know on the subject of discounts? He complains that your basis of settlement with him was at a higher rate of discount than your actual sales?

A. When we first began to sell them we made an agreement that it would be the very lowest wholesale price; that was what we were to make his royalty from. We had a number of discounts; quite a number; I am not able to state how many. I have not had much to do with the books, but I know there was quite a number. But the agreement was the very lowest wholesale price, which should be figured up once a month.

Q. Did you ultimately agree upon a standard rate without reference to the variation of discount?

A. Yes sir; it was to be the very lowest—the very lowest.

Q. I know; but did you ultimately agree upon a particular rate of discount which would be the basis of your settlement with him?

A. No sir.

Q. What was your lowest rate of discount in your wholesale sales?

A. There was a house in the West, the Toby Manufacturing Company, and there was a time we took off 43 per cent., but we never asked Mr. Everitt to allow that.

Q. How did you settle with him for those?

A. One-third off, I think.

Q. Did you ever hear any complaints about these discounts?

A. Not one word. When we would get to taking off more discounts to the trade he said he was glad of it; that it would give the trade a better chance; that there was not enough encouragement for them before, when we were taking off 25 or 30, and that he was glad of it.

Q. Why?

A. Because we could sell more beds.

Q. Then he never complained—

A. Never one word.

Q. That you were not accounting to him according to your agreement and understanding?

A. No; he always seemed to be perfectly satisfied.

Q. When did you first hear his complaints?

A. That was the time that this suit commenced.

Q. He complains that you did not allow him royalty on mattrasses and spring-bottoms, and ebony and gold finish, and some other things. Did you make mattrasses and spring-bottoms before you had this folding-bedstead at all?

A. I do not know. I do not recollect whether we did or not; I think we did.

Q. Was it a part of your business?

A. It was a part of our business; we were not in the furniture business very much, at the time we took hold of the folding-bedstead; we were in the picture-frame business. The bed business drew us into a general assortment of furniture.

Q. But spring bottoms and mattresses were in the market long before the folding-beds, were they not?

A. Yes sir; I think long before I was born.

Q. Can you tell us when Mr. Everitt was invited to become a party to the purchase of the Stark patent?

A. In the early part of February, 1878.

Cross-examination reserved.

Adjourned to Monday next, November 3d, 1879, at 3 P.M.

Philadelphia, Monday, November 3d, 1879.

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, and Mr. Kilburn.

(Mr. Bowman on call produces letter from the defendant's counsel to plaintiff's counsel, dated November 22d, 1878, which is offered in evidence by Mr. Otterson and marked, "No. 56, November 3d, 1879, R. A. W.")

James W. Fletcher sworn and examined.

By Mr. Otterson.

Q. You are a clerk in the office of the Court of Common Pleas?

A. I am.

Q. Have you a sealed envelope which was deposited by me with the Prothonotary?

A. Yes sir; which I now produce. (Envelope produced.) I do not remember the date of its deposit, or its contents.

(The endorsement directed to be noted of record, as follows:)

("To Messrs. Wendell P. Bowman, Esq., or E. Coppee Mitchell, Esq., counsel for plaintiff, in case of Everitt and Hale et. al., C. C. P. in Eq. No. 4, for Sept., T., 1878, No. 564, or if not accepted by them or either of them on or before January 1st, 1879, then the same may be withdrawn by James Otterson, Esq., counsel for defendants, if he shall so elect. The privilege of accepting the same by parties first named, or either of them, is continued, however, until the paper shall be actually withdrawn by said Otterson.

James Otterson, 11—22—'78.")

Q. Have you any reason to suppose this envelope was not deposited at the time it bears date?

A. I think that is about the exact date about the day, the 22d of November, 1878.

(Mr. Otterson opened the sealed envelope in the presence of the Master, and took therefrom three several papers.)

First, the original agreement between Elisha Everitt and Henry S. Hale, Artemus Kilburn, J. Warren Hale, H. W. Kilburn, Cheney Kilburn, and Warren Hale.

(The agreement offered in evidence by Mr. Otterson, and marked "No. 57, Nov. 3d, 1879, R. A. W.")

Second, the re-assignment of the letters patent for improvements in wardrobe bedstead, No. 148,940, by the Hale & Kilburn Manufacturing Company to Elisha E. Everitt, the plaintiff.

(Offered in evidence by Mr. Otterson, and marked "No. 58, Nov. 3, 1879, R. A. W.")

Third, the statement that the assignment of this patent from Hale, Kilburn & Company to the Hale & Kilburn Manufacturing Company, was included with the assignment of other patents in the same instrument and was dated the 11th day of January, 1877, and recorded in Washington in liber G, 21, page 206, of transfers of patents.

(Offered in evidence by Mr. Otterson, and marked, "No. 59, Nov. 3d, 1879, R. A. W.")

(It is agreed that these papers shall be left in the hands of the Master the same as any other exhibits, and not returned to the court.)

Charles Howson cross examined.

By Mr. Bowman.

Q. You stated, in your examination-in-chief, that you drew a contract between Mr. Everitt and the Hale & Kilburn Manufacturing Company. Will you state what the contract was?

A. The contract I referred to was one between Mr. Everitt and the Messrs. Hale, Kilburn & Company, or to speak more exactly, I suppose I might say a contract between Mr. Everitt and the members of the firm of Hale, Kilburn & Company. The general purport of the agreement was to give to Hale, Kilburn & Company the right to manufacture and sell a certain patented bedstead upon certain terms and conditions which I will not undertake to repeat from memory.

Q. Look at that paper (exhibit No. 57, shown witness,) and state whether that is the paper you referred to?

A. That is the paper I mean.

Q. When did you first learn of the Stark patent?

A. The time I cannot definitely say; but to the best of my recollection within 18 months last passed.

Q. From whom did you first derive your information?

A. That question I cannot positively answer. I can only say that it came to my attention in the course of a conversation or conversations with Mr. Henry S. Hale.

Q. You are solicitors—your firm—for patents, are you not?

A. We are either patent solicitors or patent agents, whichever you choose to call it.

Q. Have you any recollection of ever speaking to Mr. Everitt on the subject of the Stark patent?

A. Not the slightest.

Q. At the time that paper was drawn, do you remember speaking to Mr. Kilburn of any patent excepting the one mentioned in the agreement?

A. No sir; not the slightest.

Q. Your duty was simply to formulate that agreement and put it in proper shape?

A. That was the case.

Q. You had nothing to do with the examination of the record or to ascertain the state of the art of the patent, had you?

A. No sir.

Re-examination of Henry Howson resumed.

Before Mr. Henry Howson was re-examined, he requested that his testimony given at the preceding meeting should be read to him in full, which was done by Mr. Bowman, and pronounced by the witness to be correctly reported; and the witness said that he desired to correct an answer.

By Mr. Otterson.

Q. You said during the reading of the minutes that there was something you wanted to correct in reference to the period after the signing of the original agreement in which you heard of the Stark patent. What have you to say on that subject?

A. I wish to say that it may have been more than a year.

Q. By whom was that first called to your attention—The subject of the Stark patent?

A. I think by my son. And I would like to add to that, that when I say I heard of the Stark patent, I mean I heard of the existence of such a patent. I do not know what the patent is now. I could not describe it. The whole subject

passed from my mind after the execution of the deed. I mean the whole subject relating to this bedstead matter.

Q. Your son states in his testimony that he heard of it first, as near as he can recollect, some 18 months ago, or thereabouts; then you only heard of it after he heard of it. You heard from him first?

A. It may have been about the same time. I cannot call all these little matters to mind.

Cross-examined.

By Mr. Bowman.

Q. Do you remember when you first heard of it?

A. No sir; I cannot remember exactly. I do not remember within months.

Q. Can you tell me what you did hear at that time?

A. All that I did hear was that there was a patent granted to Stark which appeared to interfere in some way or other. The conversation was in the next room, I think, with my son; and I might have heard some part of the conversation. We have two adjoining rooms.

Q. With whom was he in conversation?

A. I do not know whether it was with Mr. Kilburn or Mr. Hale. It was one of them.

Q. Had they employed you to examine into the state of the art of this patent?

A. No sir.

Q. I mean the Everitt patent?

A. I know—no sir; what I did was entirely voluntary. In fact, when I advised them to adopt that course, they said no; that they had been satisfied, or something of that sort. I recollect I scolded them pretty well for doing it.

Q. Did they employ your son to examine into the Stark patent?

A. Into the state of the art, do you mean?

Q. Yes sir; to examine into the state of the art of the Stark patent?

A. No sir; it was not his duty to do so.

Q. Can you tell how it happened that they called your attention to it, whenever that time was?

A. I rather think it was a conversation in the next room with my son—I hearing something going on there as I walked backward and forward, and probably Mr. Kilburn himself, may have mentioned it afterward.

Q. Might this have been about six months after the agreement was signed?

A. I think it was more than that.

Q. But you have no recollection of the subject of the Stark patent being mentioned when the agreement was being prepared for execution?

A. Not the slightest mention of it.

Q. Do you remember Mr. Everitt wanting to know why you wished him to sign the re-issue papers?

A. I think I explained to him the object. At any rate he knew the object. I am satisfied about that. He knew that it was a precaution that I always took.

Q. Whom did you represent in the matter at that time?

A. In preparing the re-issue papers?

Q. Yes sir.

A. I represented Mr. Kilburn, or the Messrs. Hale, Kilburn & Company; the firm I suppose. I had been doing other business for them.

Q. The Everitt bedstead was never re-issued, was it?

A. No sir; not to my knowledge.

Q. You considered that the original papers covered the invention, sufficiently, without re-issue?

A. I will have to explain that matter. As soon as I received the notice of the Maine patent, and began to compare the Maine patent and other patents with it, which are mentioned in the paper, I think, I came to the conclusion that it was a useless task to patch up such a bad patent, such a weak patent, as the Everitt.

Q. From whom did you receive the notice of the Maine patent?

A. From my clerk in Washington. I may add too it that if my clerk had done his duty I would have known of the Stark patent; for I have found quite recently that the Everitt application for the patent was rejected on reference to the Stark patent; and it was my clerk's duty to have referred to that fact in that paper.

Q. It is not an uncommon thing for an application to be rejected, is it?

A. No; it is quite a common thing. It is more common than otherwise. You can see letters rejecting them, in my office, every morning.

Q. It is more common for them to be rejected than to be received, is it not?

A. Than to be granted without rejection.

Q. Then the objections are afterward generally overcome and the letters are granted?

A. Very often granted for the reason that the claims are reduced, and for other reasons.

Q. Then the rejection of the Everitt patent was no exception to the rule?

A. No.

Q. And it was afterward accepted and the letters issued?

A. Not in its original form, I believe.

Q. Then you are not positive about it, are you?

A. I am nearly positive. The papers were shown to me the other day; the file and contents. But of course I would not like to be positive. I think some of the claims were struck out.

Q. But that you are not positive of?

A. No.

Q. And it was afterward accepted and letters issued?

A. Yes sir.

Adjourned until Thursday Next, Nov. 6, 1879, at 2 p. m.

Philadelphia, Thursday, November 6, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, Mr. Kilburn.

Cross-examination of Cheney Kilburn.

By Mr. Mitchell.

Q. When was the Hale & Kilburn Manufacturing Company formed?

A. I do not recollect the exact time; I think about two years ago.

Q. What was the name of the concern before that?

A. Hale, Kilburn & Co.

Q. Who composed that firm?

A. H. S. Hale, J. Warren Hale, Warren Hale, Artemus Kilburn, Mr. Curtis and myself.

Q. Did those persons composing the firm take stock in the manufacturing company?

A. Yes sir; all except Mr. Curtis, who died.

Q. Did he die before the company was formed?

A. No sir; he did not; he went out of the concern. It was dissolved before we formed the manufacturing company.

Q. How did you divide the stock of the manufacturing company?

A. I do not recollect just exactly how we divided it. It was divided amongst the partners.

Q. Did the same partners who owned the interests in the Hale & Kilburn Company own all the stock in the Hale & Kilburn Manufacturing Company?

A. I do not understand you.

Q. Were there any new persons taken in at the time you made the new company?

A. I do not think there were.

Q. I understand you, then, that the stock of the company was divided amongst the partners of the firm?

A. Yes sir; I think in a short time after we formed the company, there was a young man who took a couple of thousand dollars of stock.

Q. Who was he?

A. I could not say what his name was; he was a man who lived in Troy. He was a nephew, or some connection of Mr. Hale's family. I do not recollect his name.

Q. Who did he get his stock from?

A. Mr. Warren Hale.

Q. Have you regular transfer stock books of the company?

A. Yes sir.

Q. And certificates of stock?

A. Yes sir.

Q. (Exhibit No. 40, the letter from R. Mason to the Hale & Kilburn Manufacturing Company, shown witness). Who is the R. Mason who wrote that letter?

A. It is Colonel Mason, a lawyer in Washington. I think he has another man in company with him there. It is R. Mason; that is the man we always done our business with.

Q. When did you first employ R. Mason as your attorney?

A. I could not say exactly; I should say probably a year before he wrote this letter. I should presume about that time.

Q. When did you first employ him, or ask his opinion in reference to a patent for folding-beds?

A. At the time this Stark patent came out, when we found out about Stark, when we was infringing upon his patent, then we counseled with Col. Mason on the subject.

Q. How did you first find out you were infringing on Stark's patent, as you say?

A. Stark said we was.

Q. When?

A. In the early part of February.

Q. In what year?

A. 1874—No, 1877.

Q. Where did he say this?

A. In our store.

Q. Where in your store did he say this?

A. 1878 is the time that we had the interview with Colonel Mason; I was mistaken.

Q. I am speaking of the first time you ever saw Stark?

A. In the early part of February, 1878.

Q. Where was it?

A. In our store.

Q. Do you mean to say that that was the first you ever knew of the Stark patent?

A. I never saw him before in my life.

Q. I did not ask you that; I asked you if you meant to say that that was the first time you ever knew of the Stark patent?

A. I knew it in the first part of February, from what Warren Hale told me. He said a man by the name of Stark, from the West, had been in and said we had been infringing on his patent, and that he did not stop but a very short time. I asked him, says I, "Where is Mr. Stark stopping?" Says he, "I don't know." Says he, "Mr. Everitt has just gone away; I told Mr. Everitt about it." Says I, "What did he say?" Says he, "He said he knew all about it." That is the first I ever knew of Stark's patent.

Q. Do you not remember that you visited a person at Mr. Everitt's request, before you signed that agreement with Mr. Everitt, to see about Stark's patent, in Philadelphia?

A. No sir.

Q. You did not?

A. I did not.

Q. You have no recollection of it?

A. I have no recollection of it, and never did.

Q. And you never heard of Stark's patent before February, 1878?

A. I never did;—about that time; sometime in February.

Q. How did Mr. Stark happen to go to your office about it?

A. He told me he saw it in Peterson's Magazine—saw our advertisement, which was the first he ever heard abuut our folding-bedstead we advertised in Peterson's Magazine—no! I don't mean Peterson's; I mean Lippincott's.

Q. Was Mr. Stark invited to come to your office by any one?

A. No sir; not to my knowledge.

Q. After you had this conversation with Mr. Stark what did you do in reference to his patent?

A. Well, he began to look into it; to see the value of it.

Q. What did you do in the way of looking into it?

A. We counseled with Col. Mason, of Washington.

Q. Did you go to Washington for that purpose?

A. Yes sir; and tried to have Mr. Everitt go with me, but he wouldn't go; he said it was good for nothing; he wanted to have nothing to do with it.

Q. Did you employ a man named Stevens?

A. There was a man worked for us by the name of Stevens.

Q. What was his full name?

A. I think A. B.

Q. Was it Asher B. Stevens?

A. That is it; yes sir.

Q. Did you employ him to experiment or invent with respect to wardrobe beds?

A. No sir.

Q. Did you ask Mr. Stevens to get up something which would relieve your company from paying Mr. Everitt his royalty on the patented bed?

A. No sir; we never asked him; but he said he could. We never asked him, but he went to trying experiments at his own expense.

Q. Was he in full consultation with you during the time he was making those experiments?

A. He was there in our factory.

Q. Employed by you?

A. No; we did not pay him; he did it at his own expense.

Q. But he did it in your factory?

A. He did it in our factory.

Q. And you mean to say that you did not pay him?

A. We did not employ him. He did it at his own expense.

Q. Did not you employ him and pay him for his time?

A. Not on beds.

Q. What did you employ him for?

A. He worked on chariot chairs.

Q. How did you employ him—by the week?

A. Sometimes he worked by the week and sometimes he worked by the piece.

Q. How did you employ him during the time he worked on wardrobe beds?

A. We did not employ him at all.

Q. He was not then in your employ?

A. He was in our factory, but we did not pay him for his services.

Q. Who furnished him the lumber for making his models?

A. Well, he got that in the shop, and around; it was of very little consequence.

Q. Did he go to Washington to see whether what he had done would succeed?

A. He went to Washington. Whether he went on that business is more than I know.

Q. Did not you go with him?

A. I think I went once with him, but then I think it was six or eight months, and might be a year, before these bedstead arrangements coming around.

Q. Did you go with him to visit Col. Mason to see whether what he had done would answer your purpose?

A. I have no recollection of any such thing, for I did not think his experiments amounted to anything. I did not consider them good for anything.

Q. Did not you instruct him to go and show what he had done to Col. Mason?

A. No sir.

(Mr. Otterson objects that this is not cross-examination in any sense of the word.)

Q. Do you not remember an interview between Mr. Stevens, Mr. Warren Hale, and yourself, when a plan that Stevens had prepared for manufacturing these beds was submitted and was approved by you?

A. No sir; he never got up a wardrobe bed that was ever good for anything to my knowledge.

Q. Did not you take assignments of the improvements that he made, and do you not claim to own them now?

A. He sold us out his chair—this chariot chair.

Q. I am not speaking of chairs, but beds?

A. I desire to explain it. He sold us out his chair and he said he would include all those things and put them in.

Q. Then you do claim to own them now?

A. Of course they are of no consequence, and never considered so.

Q. Do you claim to own them now?

A. Yes sir; he put them in himself, and wanted to do so.

Q. Did not you have papers drawn for Mr. Stevens to sign, assigning these improvements to you, by Mr. Howson?

A. Not to my recollection. I have no recollection of it.

Q. Do you not remember that such papers were drawn up, by Howson, by your direction, and that Stevens refused to sign them?

A. I have no recollection of any such thing. There was papers drawn in the chair business by Mr. Howson, but I have no recollection of any bedstead.

Q. Did not you agree with Mr. Stevens that if he succeeded in making such improvements as would enable you to do without Everitt's patent you would give him 3 per cent. royalty?

A. Perhaps so; I do not recollect now. I do not recollect about it.

Q. Was it not part of your agreement with Stevens that you should buy the Stark patent?

A. No sir.

Q. And the Maine patents?

A. No sir.

Q. You are positive of that?

A. I know it is so.

Q. Do you mean to say that your arrangement with Mr. Stevens about the Stark patent did not precede Stark's coming from Kansas?

A. I do not understand you.

Q. Do you mean to say you had no arrangement with Stark about his patent before he came from Kansas?

A. No sir; we never had any arrangement. Never knew of it.

Q. What paper did Mr. Stark give you when you first bought his patent?

A. He gave me a sort of memorandum of agreement, stating that he had sold it, and that he had received $200 and a due-bill amounting to $800; but it was not a regular assignment; it was just a memorandum. We agreed we would let Col. Mason draw the papers.

Q. Did Mr. Henry S. Hale know anything about the existence of that paper?

A. No sir; I do not think he did. Mr. Henry S. Hale drew the due-bill, and was called out. I do not know that he left the city, but he was called out, and left the due-bill, and I paid Stark $200.

Q. Where is that paper?

A. When Col. Mason drew the assignment, after it was drawn he passed it over to Mr. Stark, and Mr. Stark put it in the stove.

Q. Where was that?

A. That was in Col. Hason's office, in Washington.

Q. When was that paper drawn and signed by Stark?

A. About along past the middle of February, or the latter part of February, 1878.

Q. Did you give directions not to record the assignment from Stark to the Company?

A. I said nothing about it. It was left with Col Mason. It was entirely in his hands.

Q. Did you not understand that the paper was not to be recorded until the suit was to be commenced against you?

A. The matter was left with Col. Mason. He managed it just to suit himself.

Q. Do you mean to say you had no knowledge of it?

A. It was talked over there; but he was a lawyer, and I supposed knew best what to do. The assignment was signed, and he took care of it.

Q. Was not the reason why that paper was left off the record to keep Everitt in ignorance of it?

A. I knew nothing about it. That was Col. Mason's affair.

Q. Was not that your purpose?

A. I am not a lawyer, and know nothing of it. That was left to Col. Mason.

Q. Was it not understood between you and Col. Mason that a suit was to be commenced by Stark against you?

A. He may have said that that was the best way, but whatever he said we done; we done just as he told us. It was left entirely in his hands.

Q. Do I understand you to say that you knew the purpose of keeping that paper off the record was that M. Everitt might be deceived by it?

A. I did not know anything about that. I had nothing to do with it. The papers were signed and Col. Mason put them away, and there was nothing more said about it. They were left in his hands.

Q. Did not you know that it was the intention that the papers shold not be recorded?

A. I did not know. Mr. Mason took them, and said it was all right, and Stark and I left the office. We were there over an hour.

Q. Did you not know at the time that it was the purpose of Mr. Mason not to put that paper on record?

A. That was left in Col. Mason's hands to do just as he was a mind to. I did not know anything about it. I did not know whether they should be put on record or not. I trusted to Col. Mason being a lawyer, and employed him as such.

Q. Did you not know that that letter, this exhibit No. 40, (exhibit shown witness) was written for the purpose of being shown to Mr. Everitt, that he might be misled by it?

A. I did not know anything about it. No sir; I did not know any such thing. Mr. Everitt saw that letter, the very morning it came in.

Q. Was it not written for the purpose of showing it to him, and for no other purpose?

A. Not to my knowledge; no sir.

Q. Were you deceived by it?

A. No.

Q. Did you know at the time that letter came, that it was all nonsense, that Mr. Stark should bring a suit against you for violating that patent?

A. We had not bought Stark's patent, at the time. We were talking about it. That was on the 10th.

Q. I thought you said, a little while ago, that you had bought the Stark patent about the middle of February, and given him two hundred dollars on account, and a due-bill for $800?

A. That was past the middle of February.

Q. When was it?

A. I think on the 18th, or 20th, along there.

Q. Did you remember when you got this letter?

A. The day we showed it to Mr. Everitt.

Q. What day was that?

A. I could not say the day. This (the letter) is dated on the 10th.

Q. Look at the date (letter shown witness) and see if that will refresh your recollection a little?

A. It is dated on the 10th. I suppose it would be written on the 9th.

Q. The 10th of what month?

A. The 10th of April. No! the 10th of February.

Q. Is that letter dated the 10th of February?

A. Yes sir.

Q. Look at it again?

A. (Referring to the letter) The 10th of April. It says the 10th of April.

Q. Please explain the inconsistencies in your answers?

A. (Referring to the letter) That is the 10th of April. Yes sir; that is the 10th of April. I was thinking of another letter.

Q. Did this letter deceive you when you got it?

A. No sir.

Q. Did you know that it was impossible for Mr. Stark to bring suit against you for violating his patent, at that time?

A. I did not know anything about it. We left that with Col. Mason.

Q. Did you expect Col. Mason to bring suit against you, as the attorney of Andrew Stark, for violating that patent?

A. Col. Mason told us what he could do, and we left that matter in his hands. I had no more to do with it than any other man.

Q. What did he tell you that he could do?

A. I could not tell you that; I could not recollect.

Q. What did you understand Col. Mason to mean when he said he trusted "you will not continue the infringement of Stark's patent," in this letter?

A. Well, I supposed he was going to commence suit.

Q. How could he sue you for infringing a patent you owned?

A. I do not know anything about it. I am not a lawyer. We went just according to the advice of Col. Mason.

Q. What did you understand Col. Mason to mean when he said in this letter that, if you desired to continue the manufacture of these bedsteads, he would be prepared to negotiate for terms of license?

A. He was trying to see if he could not get Mr. Everitt around. He was trying to get him around for some time.

Q. Had you not bought it long before this letter was written?

A. Yes sir.

Q. How, then, could you get a license for a patent that belonged to you?

A. That I do not know.

Q. What I want to know is. Was not this letter written upon an agreement between you and Mr. Mason merely for the purpose of showing it to Mr. Everitt to influence his mind?

A. Not to my knowledge.

Q. Then if that was done, it was done without your knowledge?

A. Yes sir.

Q. The wickedness was all Col. Mason's, and not yours?

A. It was not mine.

Q. When did you first speak to Mr. Everitt about Stark's patent. I mean you, yourself?

A. In the early part of February, 1878, as soon as Stark came. In fact, Mr. Everitt knew of it before I did. He knew Mr. Stark had been in, before I did.

Q. When did you speak to him about it.—you, yourself?

A. Right off; the next day, I presume, because Mr. Everitt would be in our store most every day or two.

Q. Did not you tell Mr. Everitt, at some time of the interviews, that Stark wanted $30.000 for his patent?

A. No sir; never! I told him no such thing.

Q. Did you ever tell Mr. Everitt that you had bought Stark's patent?

A. I do not know as I did. I told him we had got to buy it; and tried to have him buy it with us; but he said he would not buy it, that it was good-for-nothing, and he wouldn't give a dollar for it.

Q. Did not you tell him that it would cost $30.000?

A. No sir; never!

Q. Why did not you tell Mr. Everitt that you had bought it, at the time you had bought it?

A. We done our best from the first part of February to the middle of February to get him to do something. He said he would not. He said he knew all about it long before we had bought his patent; that it was good-for-nothing.

Q. Then why did you conceal from Mr. Everitt the fact that you had bought it?

A. That was a matter that was left in Col. Mason's hands.

Q. Do you mean to say that you concealed this fact from Mr. Everitt by the advice of Col. Mason?

A. Yes sir.

Q. And that alone.—You had no knowledge of the purpose of it?

A. None whatever.

Q. Were you not, all the time you were concealing this fact from the knowledge of Mr. Everitt, endeavoring to negotiate with him, to reduce his royalty?

A. We presumed he did not know anything about it.

Q. But were you not, at that time, trying to get him to reduce his royalty?

A. We did all we could from the fore part of February to past the middle of February to make some trade with Mr. Everitt to get him to buy with us, or do something; but he would not do anything whatever.

Q. Did not you continue to make efforts to settle with Mr. Everitt long after the middle of February?

A. Yes sir.

Q. Do you remember a meeting which took place in the office of Mr. Everitt's counsel, on Walnut Street, where Col. Mason was present representing himself as Stark's lawyer?

A. Yes sir.

Q. Do you remember the question being asked you whether you had not become the owner of Mr. Stark's patent, and how it was indignantly denied?

A. No sir. Mr. Mason said there was no such thing on record.

Mr. Otterson: (to Mr. Mitchell.) I did not know anything about it, and if you want that on the record, I have no objection.

The witness: Judge Otterson did not know anything about that, at that time.

By Mr. Mitchell.

Q. Did you not, at that meeting, and at other meetings, offer Mr. Everitt to divide the royalty he was then receiving equally between him and Stark?

A. I do not recollect. There was a great deal said, but I do not know whether that was or not.

Q. Did not you tell Mr. Everitt, from time to time, that you would have to pay Stark so much that you could not afford to pay him what you had been paying?

A. I do not recollect. There was so much said that I do not recollect. I told him we had got to buy the Maine patents.

Q. I am not speaking of the Maine patents; I am speaking of Stark's patent. Did not you tell him you would have to divide the royalty between Stark and himself?

A. I do not know.

Q. Did you know that your attorney in Washington, Col. R. Mason, was going to commence suit against you in the Circuit Court of the United States, before it was commenced?

A. He once told me he would have to commence suit. I do not know how, or when, or in what shape.

Q. Did not you authorize Mr. Mason to commence suit in the name of Stark against you, to stop the manufacture of beds under Everitt's patent?

A. I think it was Mr. Stark that done that.

Q. What right had Mr. Stark to commence suit against you months after he had assigned his patent to you?

A. I do not know.

Q. Do you mean to say that that was a genuine suit commenced by Stark against you?

A. I do not know. I would not say it was Stark. The thing was left in Col. Mason's hands to do just as he pleased. We had nothing to say about it, at all. We employed him to manage it.

Q. Did not you tell Mr. Everitt that Stark had commenced suit against you, and he must defend it?

A. Perhaps so. I have no recollection, though.

Mr. Mitchell: I offer in evidence the following letter:

"No. 16 North 7th Street, Philadelphia, 7--10, 1878.

E. C. Mitchell, Esq., counsel etc.,

My dear sir:

The enclosed was brought to me this morning, by the defendants therein mentioned, and I send it to you for examination, and for the examination of

Mr. Everitt, your client, when you will please return it to me, and I want whatever information and assistance he may have at command to resist the attack.

You will please let me hear from you,

and oblige,

very respectfully.

James Otterson."

This letter enclosed a copy of the bill of Stark against the Hale, Kilburn Manufacturing Company, in the Circuit Court of the United States, which is already in evidence as exhibit No. 38.

(The letter marked "No. 60, Nov. 6th, 1879, R. A. W.")

Q. Did you not bring the bill inclosed in this letter to Mr. Otterson?

A. I think Mr. H. S. Hale did.

Q. Did you have knowledge of his doing so?

A. Yes sir.

Q. What did you do that for?

A. That is according to the directions of Col. Mason.

Q. Did you tell Mr. Otterson that the suit was a sham?

A. No sir.

Q. Why did not you tell your counsel here that the suit was an imaginary suit, devised by Col. Mason, and that you, yourselves, were the owners of the patent, and both plaintiff and defendant in the suit?

A. I do not know why we did not; but Col. Mason told us how to do.

Q. Did he tell you not to tell Mr. Otterson?

A. Yes sir.

Q. Did you not, in 1874, before or about the time you made the agreemeet with Mr. Everitt, visit Mr. Austin, on 8th street above Race, to see beds manufactured under Stark's patent?

A. I think I went in there once to look at his bed, but never knew anything about Stark.

Q. Did not you know that H. S. Hoover had license from Stark to make these beds?

A. No sir; never knew it until we bought the patent.

Q. Did not you know, in 1874 or 1875, that Hoover had it, first, at 230 South Second street?

A. No sir. I never knew that he had an assignment until Mr. Stark showed it himself, when he sold the patent. I recollect Mr. Austin having a bed, but whose bed it was, or whose patent he was working under, I do not recollect now.

Q. Was that before you made the agreement with Mr. Everitt?

A. I could not say now. I do not recollect anything about it.

Q. Did you not have conversations with Mr. Everitt about the manufacture of these beds, in 1875 or 1876?

A. Not to my recollection.

Q. Did not Mr. Hoover come to you and say he was going to manufacture those beds under Stark's patent, and you said you would shut him up if you could?

A. I have no recollection of such a conversation, whatever.

Q. You know Mr. Hoover, do you not?

A. I know Mr. Hoover; yes sir. But I never made such threats as shutting him up. I know that.

Adjourned until Monday next, Nov. 10, 1879, at 3 P. M.

Philadelphia, Nov. 10, 1879.

The meeting arranged for to-day was not held on account of the absence of Mr. Bowman, but was continued until Monday next, Nov. 17th, 1879.

Philadelphia, Monday, November 17th, 1879.

Parties met at the office of the Master.

Present:—the Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Henry S. Hale, Mr. Cheney Kilburn.

Cross-examination of Cheney Kilburn resumed.

By Mr. Bowman.

Q. Who went to Washington with you, when you took the assignment of the Stark patent?

A. Mr. Stark.

Q. Did anyone of the Company go, beside yourself?

A. No sir.

Q. Did any member of the Company go at any other time?

A. Not to my recollection.

Q. Did Mr. J. Warren Hale ever go?

A. Not to my recollection.

Q. Did you ever go with Mr. Stevens?

A. I think that I went once with Mr. Stevens; I am not quite certain: I think I did.

By Mr. Otterson.

Q. In connection with this purchase?

A. It was not in connection with this.

Mr. Otterson: I understand the inquiry to be in connection with this purchase, (to Mr. Bowman) is it not so?

Mr. Bowman: Yes sir; the purchase and assignment.

The witness: I do not recellect. I think I went once with him, whether it was this time that Stark and I went, or whether it was some other time, I could not say.

Q. Did you send Mr. Stevens to Washington with reference to the Stark patent?

A. No sir; at least I have no recollection of sending him there.

Q. Did either member of your firm send him?

A. Not to my knowledge.

Q. Do you know that he went to Washington to see about the Stark patent?

A. I have no recollection.

Q. Do not you know that he saw Mr. Mason about it, in Washington?

A. I have no recollection of it.

Q. Do you know whether or not he ever spoke to Mr. Mason about it?

A. Not to my knowledge.

Q. Do not you remember an interview that he had with Mr. Mason in your store, in Sixth street, near Arch, with Mr. Stark in reference to it?

A. No sir; I have no recollection of his having any interview with Mr. Stark or Mr. Mason.

Q. Did you or any of your firm or company ever correspond with Mr. Stark with reference to his patent?

A. No sir.

Q. Did you never write to him at Topeka?

A. No sir; not to my knowledge.

Q. When did you purchase this Stark patent from him?

A. In 1878.

Q. Do you remember when; in what time?

A. In the latter part of February, 1878.

Q. Who purchased it?

A. I purchased it; I did the most of the negotiation.

Q. Were the other members of the firm aware of it?

A. Yes sir; yes sir!

Q. Were they also aware of the assignment by Stark to the company?

A. No sir; I do not think they knew anything about it. Mr. H. S. Hale was in the office. It was in the afternoon that I closed the trade with him, and Mr. H. S. Hale was there, and he drew a due-bill, I think, for $800, and I think I gave Mr. Stark $200 in money.

Q. I want to know whether the members of the company knew of the assignment?

A. No sir; they did not know anything about it; but I gave him that money, and he gave me a sort of a memorandum that he had received $200, and he agreed that he was to go to Washington to see Colonel Mason to draw the assignment. At that time we intended to go right off in a day or two, but we delayed it a number of days.

Q. But, finally, you and Stark went to Washington and had the assignment papers prepared and executed?

A. Yes sir.

Q. Then when you returned I suppose you told the members of the company what had been accomplished?

A. No doubt I did; yes sir.

Q. Do you remember now to whom you told it?

A. I do not recollect.

Q. But you have no doubt of having communicated it to the company?

A. I have not.

Q. Did Mr. Mason return with you from that trip with Stark?

A. No sir.

Q. Do you remember swearing to this answer (Answer shown witness), filed by Mr. Otterson, your attorney?

A. I do not recollect the time.

Q. The 16th of November, 1878?

A. Yes sir; I recollect it.

Q. Do you remember swearing in that answer "At that time the company did not own the assignment or patent of Stark"?

A. It was not in our possession; I never saw the assignment.

Q. When did you say you went to Washington with Stark, about the last of February, 1878?

A. Oh, no; it was later than that.

Q. Later than February?

A. Later than February.

Q. When was it?

A. It was quite a number of days. I do not recollect just when, but it was quite a number of days; a little while afterward.

Q. Was it in the month of February?

A. I do not think it was.

Q. Was it in the month of March?

A. I could not say. It was quite a number of days after that.

Q. After that?

A. I do not know as I understand the question.

Q. My question is, When did you go to Washington with Mr. Stark, and have him execute the assignment of the Stark patent?

A. Well, now, my impression is that it was some two weeks after Mr. Stark and I had closed the trade; that is my impression; it might have been longer than that; I would not say

Q. Did you pay him for the patent before or after the assignment?

A. I paid him for it before we went to Washington. He gave me a memorandum.

Q. That you have stated; he gave you a memorandum, and you paid him some cash before he went to Washington?

A. Yes sir; and we gave him our due-bill.

Q. And when he came back from Washington you cashed his due-bill?

A. Yes sir; as he wanted it. I do not think it was all paid up until May, sometime.

Q. Now, I want to know how you reconcile your statement of to-day with your oath, when you swore to the truthfulness of this answer. In the answer you say, that "The Stark patent has not been assigned to them;" that is, to the company defendant?

A. The assignment of Mr. Stark, which he gave me—at least the agreement, or "memorandum of agreement," as we call it, was burned up in Col. Mason's office. I never saw the assignment that Col. Mason drew, although it was drawn while I was there in the office, and Mr. Stark signed it. Mr. Mason took it, and put it in the place he has for keeping his papers, and I never saw it. I expected him to keep and take charge of it; and Mr. Stark took his agreement, as I told you, and threw it in the stove.

Q. That was the memorandum?

A. The memorandum; yes sir.

Q. And Mr. Mason prepared the assignment and got Stark to sign it?

A. Yes sir; I suppose so.

Q. And you never saw it?

A. I never saw it; I never took it in my hand.

Q. But you knew it was fixing the title to his patent in your company, did you not?

A. I expected it was.

Q. You had paid your money for that purpose?

A. Certainly.

Q. Then the trouble is that the patent had been assigned to your company months before this suit was brought?

A. Oh, yes.

Q. Why did your company deny that fact when this answer was filed?

A. Well, I have no recollection of there being any such thing.

Q. I ask why did your company deny that assignment when this answer was filed and sworn to by them; have you any explanation of that?

A. I have no recollection of its being there; I had no recollection that there was any such thing in there at all.

Q. Why, you would not swear to anything without knowing what you were swearing to, would you?

A. No sir; not if I knew it, I would not.

Q. That is what I supposed. Then you knew what you were swearing to when you swore to this answer, did you not?

A. Oh! of course. It was read over, and I, of course, signed it. I supposed it was all right.

Q. You can read also, can you not?

A. Yes sir.

Q. You did not know, when this was signed and sworn to, that Mr. Everitt was aware of how the Stark patent was secured and how the assignment was obtained?

A. How is that signed? (Referring to the answer.)

Q. It is signed by every member of the firm. C. Kilburn, president; Warren Hale, Artemus Kilburn, Henry S. Hale, J. Warren Hale. At that time you were not aware how Mr. Everitt knew you had purchased the Stark patent, and how the assignment was arranged between you?

A. I knew nothing about M. Everitt's knowledge.

Q. Was it not the object of your Company to conceal that from Mr. Everitt?

A. Mr. Everitt—we tried all the time, from the early part of February clean up to the latter part of February to have him buy.

Q. Yes sir; you did state that. But now I want an answer

to the question---was not the object of your Company to conceal the fact of your assignment and purchase of the Stark patent?

A. I do not think we would be under any obligations to tell Mr. Everitt all of our business, after we had tried for three weeks to get him to buy with us, and after we had given him up.

Q. Then you concluded that you had a perfect right to buy this patent---the Stark patent?

A. Of course so. We had to buy it, or else stop our business; and Col. Mason said he would keep that matter in his hands, and it would be perfectly right for Mr. Everitt to help pay for it; that we should not pay him a royalty, and he would keep the documents in his possession, look the matter over, and do whatever he thought best in the matter. We had either got to buy the Stark patent, or else stop the business of making beds.

Q. And you considered that you had a perfect right to buy it, and it was a fair and honest business transaction?

A. I did, after we had tried for two or three weeks. I did not consider that we were under any obligations after I had tried, and he would not do anything, and he would not have anything to do with it; he told me so a good many times.

Q. If you considered it a fair, honest business transaction, why did you go to so much trouble and expense to conceal it from Mr. Everitt; and, after you had the title in your own name, employ counsel to bring suit against yourselves, and while that suit was pending endeavor to get Mr. Everitt to agree that 5 per cent. of his royalty should go to Stark, as you represented, while, in point of fact, you then owned his very patent?

(Objected to by Mr. Otterson because the question is based upon a mis-statement of fact; and Mr. Otterson asks Mr. Bowman to put his questions separately, so that the witness may be able to answer intelligently.)

Mr. Bowman: (To witness.) Cannot you answer that as it is?

A. That matter was left entirely in Col. Mason's hands. We

had nothing to say about it. Col. Mason was going to manage it to suit himself.

Q. After you had purchased the Stark patent and had the assignment of it, why did you want Mr. Everitt to agree that 5 per cent. of his royalty should go to Stark?

A. We could not get him to say anything about it.

Q. But my question is: Why did you want him to agree to it?

A. We wanted him to do something. We wanted him to make some kind of an offer. We wanted some kind of an offer. We did not think it belonged to us to have to buy the Stark patent, and then pay him a royalty.

Q. But my question is: After you had bought this Stark patent, and had the assignment of it, then it was your own, and Stark had nothing to do with; now, why did you then want Mr. Everitt to agree that Stark should have 5 per cent. of the royalty, which you agreed to pay him, Mr. Everitt?"

A. That was Mason's idea; Mason's; that was his.

Q. Well, the 5 per cent. which you were to get out of Mr. Everitt, on his royalty, under his agreement with your company—was that to go to Mr. Mason?

A. No sir; it was just a price. Mr. Mason just proposed to him 5 per cent. Mr. Everitt would not say anything. He would not say he would give one cent. He would say nothing only that it was not good for anything.

Q. To whom was that 5 per cent. to be paid; it would have been put into the pockets of the Company, would it not?

A. We had an allowance for that. It would have gone into the Company, of course, if there had been any such sum paid.

Q. And Mr. Everitt would not agree to it; is that so?

A. He would not do anything?

Q. You say that he would not do anything?

A. Yes sir.

Q. Was not he always willing to stand upon his agreement with your Company?

A. Yes sir; but when we found out that there was other patents he would not do anything. There was the Maine patent came out.

Q. When you say that he would not agree to anything, you mean that he would not agree with you to this arrangement to divide his claim for royalty under his agreement?

A. No sir; and he would not pay anything either. We became satisfied, by two or three counsel, that we had to buy it or stop our business, because Everitt's patent did not amount to anything.

Q. Mr. Mason was your only counsel in the matter, was he not?

A. No sir.

Q. How many improvements have been made upon the Everitt patent?

A. They are all in evidence—I suppose they are all in.

Q. In your examination the other day you spoke of Stevens working on the Everitt patent, and trying to make some improvements; where are the models that he got up?

A. He was a trying to get up a bed, Stevens was, at his own expense; to get up a model. I do not know as it had anything to do with Mr. Everitt's patent. He always said he could get up one that would not infringe on anybody's patent. I do not know where they are. I supposed they had been brought here. If they were not, we have them---well, I do not know that we have Stevens', he got up a good many; quite a good number of things, and he would show them, and it appears that there were one or two, when he left---run away, as you might say---left at his boarding-house.

Q. Where was that?

A. On Spruce street, somewhere. I do not know. I suppose in the neighborhood of Sixth or Seventh street; along there.

Q. Did not Mr. H. S. Hale go there and get these models?

A. Yes sir.

Q. Where are they now?

A. I could not say. I presume that they are at the store. I do not know.

Q. What was the object of this undertaking of Stevens?

A. Well, he was a man that was always trying to get up

some new things. He was always trying to invent something; some new idea. I suppose his object was to make money at it.

Q. Was not the object well understood between your Company and Stevens, and was it not for the purpose of devising means by which to avoid the payment of Everitt's royalty?

A. I do not know what Stevens idea was.

Q. No; but was it not the understanding between your Company and this man?

A. No; he wanted to get up something. He said he could get up a bed, and he would sell it to us cheap. I told him we was always open to anything we got cheaper.

Q. You had papers prepared also, had you not, to secure whatever virtue there might be in Stevens' models?

A. I think we did.

Q. Who prepared those papers?

A. I think Mr. Howson did.

Q. Were they ever executed?

A. No sir; he ran away. He was to execute them on Monday, I think, but he left.

Q. Have you got those papers?

A. I presume they are at the store, or at Mr. Howson's. I guess they are at Mr. Howson's. I am not sure about that.

Mr. Bowman: I call, now, for the production of the models and papers referred to by this witness, including the drawings connected with the Stevens' model.

In answer to Mr. Otterson, you spoke of the discount allowed upon the Everitt bedstead; I want to ask you whether you had not different styles and finish of beds?

A. Yes sir.

Q. And the style and finish made a great difference in the price, did it not?

A. In settling with Mr. Everitt, we allowed him royalty on the extra price received for all the extra finish beds. I think we did, the latter part of the time. Mr. Hale had the matter in charge.

Q. But the fore part of the time you did not?

A. I think we did upon all the higher priced styles of beds; but I am not quite certain about it.

Q. Then I understand you to say that you manufactured beds of different finish?

A. Yes sir.

Q. And those beds you would send out to your various branch stores, would you not?

A. Oh! yes sir; going to our other stores and our customers. The finish when it was in gold, or guilt, or something of that kind, was what we call extra finish, not plain without walnut finish, when we might finish a bed in a day, going over it very hurriedly; But, in that plain walnut finish we never made any account of it, even if we spent $100 on it; but it was in the gold and ebony finish where we deducted that from the beds—the same as we did with the springs. Mr. Everitt was always satisfied. He did not expect us to pay for the extra finish, or springs, or, anything of that kind. At least, he never found any fault, and was always perfectly satisfied, up to the time we stopped paying him. He always seemed satisfied with everything, and, in fact, told us he did not believe he could have got anybody in Philadelphia that would have done so well—sold so many beds, and settled so well. That was up to six weeks of the time we bought Stark's patent; and he was perfectly satisfied with everything, and said he did not think he could have got another house in Philadelphia that would have done half so well as we did.

Q. Do I understand you to say, now, that you deducted from Mr. Everitt the extra finish?

A. Yes sir. The best finish we did. We would take it off the bed. If the bed was worth $100, and there was $25.00 of extra guilt put on it, we would take off that $25.00 in settling with Mr. Everitt.

Q. What about the all ebony finish bed-steads?

A. I do not remember anything in particular about that. I think it was ebony and gold, though, where we made the reduction; I think that was the only place.

Q. Did you also deduct for looking-glass fronts?

A. Yes sir; looking-glass plates.

Q. Were they not all a part of the bed?

A. No sir. We put the frame in, into the front part of the bed, and put a panel in, a mere panel, and while a great many of them were so sold, if anybody wanted a French plate put in we would take that panel out and put the plate right in. Some would have one way, and some the other—mostly the panel. We could make the bed so that is was always right and ready for the change. We did not consider the looking-glass, the French plate we put in it, had anything to do with the bed, any more than to put a feather bed on the bed, or pillows.

Q. You had these beds with all these extra finishes in your store, in your stock, and in your branch stores, at all times, had you not?

A. No, not always. They never sold very rapid.

Q. But you always tried to have them on hand in the stock?

A. Always tried to.

Q. You did not sell, for instance, in your New York store, a plain bed and then send it over to Philadelphia to have these extra finishes, put on it, did you?

A. No sir; not often. Occasionally that was done.

Q. You manufactured the plain and extra finish ones as a part of the stock in trade to send to your different stores?

A. Oh! yes sir.

Q. Did you always deduct in your settlements with Mr. Everitt, the springs?

A. We did not in the fore part of the time when we first commenced. It was overlooked by Mr. Hale, and we paid Mr. Everitt royalty on the springs for some time. Then, Mr. Hale found it out, and we talked with Mr. Everitt and told him it would have to be deducted, and he would be charged back with the springs. And he seemed perfectly satisfied.

Q. Do you say that Mr. Everitt agreed that that should be taken off?

A. He never complained at all.

Q. My question is, did Mr. Everitt agree that you should deduct the cost of the springs?

A. Yes sir; of course he did; he was always perfectly satisfied.

Q. I did not ask what he was satisfied with. I want to know whether you swear that Mr. Everitt agreed that your firm should deduct from him the cost of the springs?

A. I had always understood so from Mr. Hale. I do not know that I ever talked about the matter with Mr. Everitt.

Q. You see that is very differrnt from swearing that he did agree to it—Then you did not mean to swear that Mr. Everitt did agree that you should take off the cost of those springs?

A. I am quite sure that I talked to Mr. Evertit about those springs.

Q. Do you mean to say, that Mr. Everitt agreed that you should deduct the value of those springs from him in his settlements?

A. I am very sure he did say so; very sure.

Q. The springs were part of the bed, were they not?

A. The springs were made for folding beds, or any other beds we was a mind to put them on to. They will go as well on one bed as on another.

Q. Were they not a part of the Everitt bed?

A. No sir; I did not consider them so. A good many would buy it without them.

Q. You did not consider them so—was it not your rule never to sell a bed without springs?

A. No sir; we sell a great many without springs. There is no particular rule about it. We sell them with the springs, or without.

Q. Did not you advertise to the public that the springs were a part of the bed, and that you never sold a bed without the springs?

(Objected to by Mr. Otterson because, if so, the advertisement will speak for itself.)

A. I do not recollect anything about that.

Q. (Advertisement shown witness) I call your attention to this advertisement, and particularly to this language, "none are sold without springs—special notice to the public."

A. I did not know there was any such thing in print.

Q. Who attends to the advertising of your establishment?

A. Mr. Hale attended to it mostly, he and Mr. Roberts.

Adjourned until Monday next, November 24th, 1879, at 3 p. m.

Philadelphia, Monday, November 24th, 1879.

Parties met at the office of the Master:

Present:—The Master, Mr. Otterson, Mr. H. S. Hale, Mr. Cheney Kilburn, Mr. Everitt.

On account of the absence of Mr. Bowman adjourned until Wednesday, December 3d, 1879.

Philadelphia, Wednesday, December 3, 1879.

Parties met at office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, Mr. Cheney Kilburn.

Cross-examination of Mr. Cheney Kilburn resumed.

By Mr. Bowman.

Q. At the last meeting I called for the Stevens models and papers which were drawn up between your firm and himself with reference to those models—are they here?

A. They are here; Yes sir.

(Three models, together with drawings and specifications produced by witness: The three models offered in evidence by Mr. Bowman, and marked, respectively, "No. 60, Dec. 3d. 1879, R. A. W." "No. 61, Dec. 3d, 1879, R. A. W." "No. 62, Dec. 3d, 1879, R. A. W." The drawings and specifications also offered in evidence by Mr. Bowman and marked, "No. 63, Dec. 3, 1879, R. A. W.")

Q. Did you, or your firm, execute an agreement with Mr. Stevens in relation to the models which you have produced?

A. There was an agreement; Yes, sir. I am sure there is an agreement.

Q. Was it signed?

A. Now, I do not know. I cannot answer that question. Mr. Harry Hale made all that arrangement, made the trade, and I think it was in Boston where it was done, but I cannot say anything about it.

Q. You saw the agreement, did you not?

A. I do not think I ever saw it; I have no recollection of ever seeing it.

Q. Do you know where it was signed?

A. I do not know. I suppose it was signed in Boston.

Q. Is that paper now in the possession of your firm?

A. I expect so; I do not know.

(Mr. Otterson interrupts, saying that he does so in order to save time, and asks Mr. Henry S. Hale if he has papers such as those spoken of by Mr. Bowman. Mr. Hale says that he has. Mr. Bowman calls for the production of those papers, and they are produced as follows:

Paper dated Boston, Massachusetts, July 28, 1878, signed Asher B. Stevens, and recorded Liber "C," 23, 480, Washington; the paper offered in evidence by Mr. Bowman, and marked "No. 64, Dec. 3, 1879, R. A. W.;")

(Another paper of the same date, in Boston, recorded Liber "H" 23, 101, Washington.

Also, a receipt of the same date in full for fifty volumes of patent office reports.

Also a copy of due-bill, of same date, for $85, given to Stevens.

Also release dated Aug. 10, 1878, recorded Liber "H" 23, 102, Washington, which paper is offered in evidence by Mr. Bowman, and marked "No. 65, Dec. 3, 1879, R. A. W.")

Mr. Bowman: In addition to the call already made. I also

call for the agreement made between the defendants and Asher B. Stevens, dated the 16th day of March, 1878.

(The agreement produced by Mr. H. S. Hale.)

Mr. Bowman: I also call for the production of the agreement made between Henry S. Hale and Asher B. Stevens on the 10th day of February, 1876.

(The agreement produced by Mr. H. S. Hale.)

By Mr. Bowman:

Q. In your account with Mr. Everitt I noticed that you have deducted from him the sum of one hundred dollars in connection with a stand at the Centennial Exposition. Will you state why that was deducted?

A. Because it was agreed upon. That was what was agreed upon between Mr. Everitt and us, whatever it is; I do not think it is $100.

Q. Do you mean to say that Mr. Everitt agreed you should deduct that sum from him?

A. I do, and never heard any complaint from it whatever; this is the first I ever heard anything of it whatever.

Q. With whom was that agreement made?

A. I presume it was made with Mr. H. S. Hale and myself, but more particularly Mr. Hale, because he had the charge of the Centennial stand.

Q. Were you ever present when he agreed with any one that that money should be taken from him?

A. I think I was.

Q. Is that the best answer you can give me; that you think you were; cannot you speak positively?

A. Yes sir; I know that was the agreement.

Q. Then, if you know that such was the agreement, tell me who it was made with?

A. It was made with Mr. H. S. Hale and myself.

Q. With both of you or one of you?

A. I presume we were both together. I do not recollect exactly about that.

Q. You do not remember whether it was made with both of you or one of you?

A. I do not.

Q. Do you know which one it was made with?

A. I think we was all three together.

Q. Where was it made?

A. I think it was in our office. I am quite sure it was.

Q. When was it made?

A. About Centennial time; I do not know exactly the date.

Q. The stand was yours, was it not, at the Centennial?

A. Yes sir; excepting a part that Mr. Everitt had beside us; we made an agreement to take his with ours.

Q. Was not that place obtained for you?

A. I do not know as it was.

Q. Do not you remember that it was taken by Mr. Everitt simply to accommodate you, and give you more space and room?

A. I do not recollect.

Q. But you do not say such was not the case?

A. I do not recollect any such thing as that.

Q. Did Mr. Everitt have any goods or inventions on this space?

A. It seems to me he had a wash-stand there, but I am not quite sure about it.

Q. Was not the wash-stand yours?

A. I guess he had not paid for it; it was ours.

Q. Then it was yours, was it not?

A. He hadn't paid for it. I do not believe he ever took it. I guess we have it now; it is good for nothing.

Q. Then it was yours, was it not?

A. I do not think we considered it so at the time.

Q. I do not care anything about that; I do not want what you consider or did not consider. I want the fact—is not it yours and was it not yours at the time?

A. I guess it was.

Q. Is it not yours at this time?

A. Yes sir; it is now.

Q. Was it not then?

A. We did not consider it so.

Q. I am not asking you what you considered; was it not yours?

A. I do not know anything about that.

Q. Who made that washstand?

A. We made it in our factory.

Q. With your labor and your money?

A. Oh, yes.

Q. Then why did it belong to anybody else?

A. I think it was to pay us for that washstand.

Q. If he wanted to buy it?

A. He claimed a patent on it; he wanted us to make him one, and we did so. He wanted to exhibit it.

Q. All the other goods on exhibition there belonged to you, did they not?

A. Yes sir; at least I do not think of anything but what did.

Q. You occupied all the space, did you not?

A. Yes sir.

Q. Then why should Mr. Everitt make such an agreement as you have stated to pay you one hundred dollars for nothing?

A. That was to advertise his foreign patents. He was to have the privilege of coming there, and something of that kind, to show up our beds to foreigners and sell patent rights. That is the way I understood it; he was to have the privilege of selling them whenever he pleased.

Q. He had the right to sell the bed, had he not, to anybody he pleased without it?

A. He had the right to sell the patent right. He always claimed to have the right to take out letters patent in foreign countries, and he used to come there and show up our beds to his customers, but he had no business to sell our beds.

Q. Did he go there to sell the beds?

A. I presume he did. I was there a very little myself; he was there most of the time, Mr. Everitt was, at the Centennial.

Q. You had no right to interfere with his right of selling his patent rights to foreigners, had you?

A. No sir.

Q. And yet you say he agreed to give you $100 to let him do it?

A. Yes sir; for having the privilege of coming and showing, and that was to fix the stand up; I think we did the most of it, put around a very nice railing, and all that thing.

Q. But was it not for your benefit?

A. I presume it was; but for Mr. Everitt's benefit at the same time.

Q. Did not you have some one there to exhibit this bed for your own benefit?

A. Yes sir.

Q. Can you tell me whether the beds and bedsteads manufactured since 1875 have the improvements on which were patented by C. Kilburn?

A. I do not recollect the exact dates of that patent.

Q. That I have not asked you; but have the beds and bedsteads which were manufactured since 1875 had on them the patent which was patented by C. Kilburn?

A. I do not recollect the date of the patent; I do not know when the patent was taken out; but all that we have made since the date of the patent have had them on.

Q. In answer to a question asked you the other day, on cross-examination, as to who your attorneys were, when I asked you whether you had other attorneys besides Mr. Mason in reference to this matter, you answered yes; but you did not tell me who those attorneys were?

A. The two Mr. Howsons; they have always been our patent lawyers. They have been for a number of years.

Q. The same gentlemen who were called and examined in this case?

A. Yes sir.

Re-examined.

By Mr. Otterson.

Q. A great deal has been said about this washstand; I mean this washstand that was at the Centennial Exhibition, and that

was on the platform there erected for Mr. Everitt: you say it was made by your firm; do you know how your firm came to make it, or by whose order it was made?

A. It was made by Mr. Everitt's order.

Q. You made it for him?

A. Exactly.

Q. Who furnished the specifications and drawings, if there were drawings?

A. Mr. Everitt.

Q. Was it an invention; did he claim it to be?

A. He claimed it.

Q. And took this means of bringing it into notice?

A. Exactly.

Q. He was to pay you for it, but never did; is not that it?

A. That is the way I always understood it.

Q. Then do you mean to be understood as saying---or what do you mean to say with reference to his bringing customers to the stand---that that was a privilege accorded to him by yourselves, for a consideration?

A. Exactly; to show up his patent.

Q. That, and the bedstead?

A. That, and the bedstead. He had the privilege of coming around the stand, any time he pleased.

Q. And when the Centennial was over the charge was made to him in his account, without objection, and he gave you a receipt for it?

A. Certainly; I never heard any complaint about it.

Q. Has it ever been referred to since, until this litigation?

A. Not to my knowledge.

Q. To avoid confusion, I want to ask you whether you meant to say, in your cross-examination the other day, that you went to Washington with Mr. Stevens, on the subject of the patents for folding-beds?

A. No sir; never.

Q. You went to Washington with him?

A. I went to Washington with Mr. Stevens about the chariot chair; but never went on the bed business.

Q. Then that trip had nothing to do with the folding-bed business?

A. Nothing at all.

Owen D. Roberts recalled and examined.

By Mr. Otterson.

Q. Can you state what all the items of this charge of $90.80 were?

A. I can. I brought a memorandum with me. I have a copy of the bill here, but, unfortunately, the book which contains it has not been placed among the books which have been brought here to-day. I can produce the book. The bill is dated 16th, May, 1876; Mr. E. E. Everitt to Hale, Kilburn & Co., one platform $25; carpet for same, as per bill, $40.80; 9 feet of railing and posts, $15; lettering sign, $10; total, $90.80. The book containing this charge will be produced.

Q. On page 5 of your testimony-in-chief, on behalf of the plaintiff, speaking of the contents of the sales-books, you say "that it is the book of charge in all cases except to retail parties shows bills subject to a cash discount"; will you tell me what you mean by that expression?

A. I do not think the reporter has punctuated that correctly. I will read it as I gave it: "The sales-book, which is the book of charge, in all cases except to retail parties, shows bills subject to a cash discount"; that is, all bills in that book, except bills to retail parties, are subject to a cash discount.

Q. On page 13, you say—no! that is Mr. Hoffman's testimony—he says, "that the copy bill book discloses the fact that they have taken off of the long price bills from twenty-four and a half to thirty-three and a third discount to their New York store; the Boston and Baltimore stores are not so much"; is that so, and if so is there a reason for it?

A. It is not so, as Mr. Hoffman puts it. Since the establishment of the Baltimore store the discounts to New York and Baltimore have been the same, precisely. The Boston store was three and one-third per cent. less, for the reason that the first year we agreed to pay one-half the rent of the Boston store, and in consideration of our part of that expense, we made the

discount three and one-third less than to the Baltimore and to the New York store. After the first year the discount to these stores was the same.

Q. In establishing these branch stores in New York, Boston and Baltimore, was there any purpose in that connection with reference to the introduction of these beds?

A. That was the sole purpose of the establishment of these stores; that is, it was made the purpose in the minds of the men who took charge of the stores at Baltimore and Boston.

Q. They had opened the stores for their individual interests, but the idea in taking your goods was to introduce those specialties in those cities?

A. Yes sir.

Q. And that was the purpose of your firm in assisting these stores; to give market to these goods?

A. Yes sir.

Q. None of the expenses of those stores were charged to this account, were they?

A. None but the rent that I speak of.

Q. But that was not charged to Mr. Everitt's account, was it.

A. No sir: not to Mr. Everitt's account.

Q. Mr. Hoffman says that the first sale of these goods was made on the 7th of September, 1874: is that so?

A. That is not so. The first charge in the sales-book shows a bed delivered to R. Freeman, September, 1874. That bed was delivered to him with the understanding that if he could not sell it it was to be returned. It was returned because he could not sell it.

Q. It has not been said when the first actual sale was: do you remember?

A. I do not.

Q. Have you any recollection in reference to the books as to the order on the sales-book, prior to 1876; Mr. Hoffman refers to such a state of things in those books?

A. The only difference between the books that I can detect is, that, previous to that time, the folio page of the order-book was not put on the bill-head, and consequently did not show

in the sales-book, which is the only difference I can see in the books prior to and subsequent to that date. It did not affect the correctness of keeping the books at all.

(Mr. Otterson, in personal explanation, says that in answer to the call for the production of the Everitt patent papers, he stated, on page 40, that they were in the envelope sealed up and in the hands of the Prothonotary. He now says that that was a mistake. The papers were never in the possession of the defendants, as far as he knows, but always in the possession of Mr. Everitt.)

Q. In the bills, or charges, on your books for goods transferred to the New York store, were only bedsteads included, or were there other articles?

A. In the bills which were sent to the New York store?

Q. Yes sir; and which were referred to you in your testimony on page 127?

A. Yes sir; there were other goods, such as springs, flexible springs, and mirrors.

Q. You stated in your former testimony that the actual cash payments to Mr. Everitt for royalties would not correspond at all times, in amount, with the receipts; and that the difference was made up in charges and merchandise against it; have you examined that account to see what those particular items of charge were?

A. Yes sir; I have a memorandum here. (An account of the items of merchandise which Mr. Everitt received as cash, taken by the witness from the books now present, produced by him, and handed to Mr. Bowman.)

Q. In your cross-examination you stated that the defendants sold the Everitt bedstead to Daniel M. Karcher & Sons?

A. I do not think I stated that they sold it. I think I was asked the question, but could not answer.

Q. Do you know now whether they did?

A. Yes sir; we did.

Q. Can you turn to the book in which there is a record of the sale?

A. Yes sir; I can; but that book is not here. It was in-

tended that it should be brought down with the books which have been brought here to-day, but I find that the book is not here. It can be produced.

Adjourned until Monday next, Dec. 8, 1879, at 3 P. M.

Philadelphia, Monday, December 8, 1879.

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. C. Kilburn, Mr. H. S. Hale.

Re-examination of Owen D. Roberts resumed.

By Mr. Otterson.

Q. You said, in giving the receipts for cash, that the cash paid would not correspond with the amount of the receipts, and that the difference was merchandise, or other things, which was charged to Mr. Everitt. Will you state what merchandise was charged to him, from time to time; can you do so?

A. I did, at the last meeting, and handed him the account. (Account handed the Master.)

Q. What is that paper?

A. It is an account of the charges shown in our ledger of charges for cash, merchandise and interest items against Mr. Everitt.

Q. That is not cash, then, is it?

A. Yes sir; it is, and shows a cash charge of $162.50.

Q. This is the same schedule that was produced before the Master at the last meeting?

A. Yes sir.

Q. And since that it has been verified by Mr. Everitt and yourself comparing it with the books?

A. No sir; not comparing it with the books, because Mr. Everitt said it was right.

Q. Is it right—because the books are here?

A. Mr. Everitt was to come to our office to verify it, according to agreement, as I understood at the close of the last

meeting, and Mr. Everitt came and said it was all right. He came there to our office on that understanding, I think with Mr. Hoffman, and declared that there was no use in looking at the books.

Mr. Bowman :—Mr. Everitt says that he did not say it was all right, but that he said he did not know whether the figures were right or not ; that it would be right if the Master would say so.

Mr. Otterson :—The question is not whether the Master agrees to it ; the question is whether the items of interest and cash, accounted for as merchandise, were right or not.

Mr. Bowman :—Mr. Everitt cannot admit that.

By Mr. Otterson.

Q. What passed between you and Mr. Everitt upon the subject of that paper ?

A. According to arrangement, Mr. Everitt came to the office of the Hale, Kilburn & Co. manufacturing establishment on Thursday last, in company with Mr. Hoffman, and agreed that there was no use in looking at the books, because he said that account was an exact copy of the charges in the book, and that he was satisfied it was an exact copy, and did not want any examination of the books.

Q. And brought that paper in his hands ?

A. Yes sir ; he brought the paper with him.

Mr. Otterson :—I offer that paper in evidence.

Mr. Bowman :—To which I objeet. The witness, I think, has confounded this statement with another account, which was referred to at the last examination. As my client now states that he has no knowledge of the accuracy of the figures contained in the statement, I must insist upon the production of the books.

Mr. Otterson : I understand that the books are not here, simply because the plaintiff, in person, said that there was no need of producing them, the statement submitted being correct. The books will be produced hereafter, if necessary. I ask that the statement be put upon the minutes.

The statement is as follows:

1875.						
Oct.	31,	Expense,	.	.	.	$162 50
Feb.	9,	Mdse., as per sales-book	"A,"	123,		7 50
June	14,	"	"	"	"	583,	1 17
July	8,	"	"	"	"	657,	15 50
Aug.	18,	"	"	"	"	760,	1 50
Nov.	4,	"	"	"	"B,"	44,	1 05
"	17,	"	"	"	"	93,	50
Dec.	30,	Interest.	.	.	.		16 15
1876.						
Feb.	24,	Mdse. as per sales-book	"S,"	630,		12 50
Mar.	3,	"	"	"	"	689,	2 00
"	21,	"	"	"	"	807,	5 67
"	22,	"	"	"	"	816,	32
"	24,	"	"	"	"	826,	25
May	15,	"	"	"	"C 1,"	101,	90 30
Aug.	8,	Interest,	.	.	.		21 54
July	10,	Mdse., as sales-book	"C 1,"	234,		24 60
Aug.	31,	Interest,	.	.	.		7 16
Sept.	8,	Mdse., as sales-book	"C 1,"	314,		6 00
Dec.	30,	Interest,	.	.	.		36 50
1877.						
Aug.	20,	Mdse., as sales-book	"A 1,"	453,		3 00
Oct.	2,	"	"	"A 2,"	540,	4 00
"	16,	"	"	"	"	563,	4 00
Nov.	16,	"	"	"A 1,"	553,	4 50
						$428 71

By Mr. Otterson.

Q. You were asked, in cross-examination, if you knew the firm of Swann & Clark, of this city; can you say now whether they purchased goods of you?

A. Yes sir; they did.

Q. Have you a book here, showing their account?

A. Yes sir.

Q. Is it the ledger?

A. No sir; sales-book.

Q. Will you turn to it, or will the sales-book show all the sales to them?

A. Yes sir.

Q. Then please turn to the sales-book and say how many different sales of these folding-beds you made to that firm?

A. Only one sale to that firm up to the time the litigation commenced in regard to the folding-bedsteads.

Q. Do you mean to say that since the litigation began you have sold any Everitt bedsteads to them?

A. We have sold, I think, one or two folding-beds to them this year.

Q. Are they Everitt bedsteads?

A. I do not know whether they are Everitt bedsteads or not; they are folding bedsteads.

Q. Do you know whether they were bedsteads that were manufactured under the Everitt patent, or under the other patents?

A. I do not know.

Q. You made but one sale to them prior to this litigation?

A. Yes sir.

Q. Of how many bedsteads?

A. One folding-bedstead.

Q. What is the date of that?

A. September 13th, 1876.

Q. And in what book is it?

A. In sales-book "C," 1, page 323.

Q. Did you sell D. M. Karcher & Sons?

A. Yes sir; we did.

Q. How many sales did you make to them?

A. One or two.

Q. Will you refer to them?

A. Yes sir. (Referring to the sales-book.)

Q. Can you say whether it was one or two?

A. Yes sir; two sales. One sale is recorded in sales-book "B," page 767, March 14, 1876, one bedstead with spring and mattress.

Q. Now the other sale; state what it was?

A. The next sale was the sale of two bedsteads, June 15th, 1876, and recorded in sales-book "C," 1, page 188.

Q. Were they both Everitt bedsteads, or folding bedsteads?

A. Both folding bedsteads; yes sir.

Q. And those are all the sales you made to that firm?

A. All the sales of folding-bedsteads.

Q. Did you sell to Cameron and Weber?

A. Yes sir.

Q. Will you state what the sale was, and when made?

A. The sale is of one folding-crib, made on September 8th, 1876, recorded in sales-book "C," 1, page 315.

Q. Is that the only sale you have made to that firm?

A. Yes sir.

Q. Did you sell to Kampe & Co.?

A. Yes sir.

Q. Will you state what, and when?

A. A sale of one folding-crib, December 8, 1874, and recorded in order-book "M," page 145. It does not show in the sales-book because it was a cash sale, paid on delivery.

Q. Is that the only sale of a folding-bed to that firm?

A. Yes sir.

Q. Did you sell to Mitchell & Rummelsburg?

A. We did not sell them, up to except within a few weeks of this time.

Q. How recently was the first sale made?

A. Within six weeks of this time.

Q. Was that an Everitt bed?

A. I cannot say; it was a folding-bed.

Q. Was it more than one?

A. I cannot say from positive knowledge. We have not the books of that here.

Q. Did you sell Trymby & Cunningham?

A. No sir.

Q. Not at all?

A. No folding-beds.

Q. Did you sell Freeman & Miller?

A. We did not sell them. We sent them a bed on sale, which was returned to us.

Q. One bed?

A. Yes sir, one bed.

Q. And it was returned to you?

A. Yes sir.

Q. That was a Philadelphia house?

A. Yes sir.

Q. Did you sell Moore, York & Howell?

A. Yes sir.

Q. When?

A. There was a sale to Moore, York & Howell, one bedstead, November 30, 1877, recorded in sales-book "A," 1, 569.

Q. Did you make any other sale to them?

A. No sir; not of the folding-bedsteads.

Q. Did you sell to Allen & Bro.

A. Yes sir.

Q. State when and what?

A. One sale; one bedstead, May 5th, 1875, recorded in sales-book "A," 436; two bedsteads, August 11th, 1875, sales-book "A," 744; one bedstead, November 6, 1877, recorded in sales-book "A," 2, 591.

Q. Did you sell to C. B. Mench?

A. No sir.

Q. Did you sell to H. C. Kramer & Co.?

A. No.

Q. Did you sell to A. Barlow?

A. Yes sir.

Q. State what and when?

A. Sale of one bedstead, recorded in order-book "D," page 82, September 10, 1878; the order-book is not produced because it is now in active use at the store. It can be seen there. That was a cash sale, and did not go into the sales-book at all.

Q. Did you use the word "wholesale," in your examina-

tion before, as applied to these sales, and if so what did you mean by it?

A. We apply the term wholesale—

Q. I am talking about you, not anybody else.

A. I applied the term wholesale to these sales simply to designate the difference between the furniture trade, and the retail trade which was for people who designed to use the bedsteads for their own wholesale use.

Q. Buying them out of your store?

A. Yes sir.

Q. And it was in that sense of the word that you used the term "wholesale"?

A. Exclusively; yes sir.

Q. These are all city firms that you have spoken of?

A. Yes sir.

Q. Do you know where these goods were delivered, in any case?

A. I do not.

Q. That would not come under your knowledge?

A. No sir.

Q. In your cross-examination you were asked with reference to an entry of May, 8th, 1875, one crib, No. 3, plain, and mattress, from the statement of the New York store; and then you were asked what was the price of it, and your answer was "$50." Did you mean the crib and mattress, when you said "it"?

A. I did.

Q. Then the $50 was the price of both, was it?

A. Yes sir.

Q. Can you turn to the book, or have you any means of telling us what the price of both was, as there are two articles?

A. The price of the crib in that instance was $40; the list price.

Q. And the mattress was the $10, making $50; was that it?

A. Yes sir.

Q. Then, in settling with Mr. Everitt, you settled for the list price of the bed, exclusive of the mattress?

A. Yes sir; less the discount.

Q. Undoubtedly; the discount taken from the bed alone, and not from the price of the mattress?

A. Exactly.

Q. Was there on the same date an entry of one bed, No. 3, veneered, and springs?

A. Yes sir.

Q. Tell us what was the price of the bed, independently of the springs?

A. The price of the bed was $95; the list price.

Q. In your answer, on cross-examination, you said that the price of it was $120; that is, that was the price of the bed and springs?

A. Yes sir; that is the price for which they were sold in New York, at the retail store.

Q. Then, in this and that instance you settled with Mr. Everitt upon the list price of the bedstead, deducting the discount?

A. Yes sir.

Q. On the 22nd of May inquiry was made about one bed, No. 3, veneered, and spring; have you that?

A. We have a statement showing that; yes sir.

Q. They sold together, you said, for $112.50. I want to know what the bed sold for?

A. The list price of the bedstead was $95.

Q. On the 2nd of October, 1875, one bed, No. 1, and spring. You were asked what that sold for, and your answer was $130 for the articles. I want to know what was the list price of the bed?

A. $140 was the list price of the bed.

Q. And you settled with Mr. Everitt upon the basis of $102.06; does that appear there?

A. That appears in his account book. Yes sir.

Q. How do you get at the $102.06?

A. By taking ten per cent. and ten per cent., and ten per cent. from $140, which leaves a net of $102.06.

Q. September 18, 1875, the return from the New York store of that date shows a sale of two beds, No. 3, plain, and springs, $193.56. What was the list price of those beds separately?

A. The list price of the beds was $80 each.

Q. Do you know what they sold for separately?

A. I do not; I have no means of telling. They were sold in total, and reported to us in total.

Q. The two beds and the springs were sold for a round sum?

A. Yes sir.

Q. Is there an entry there of one bed, No. 1, plain, and springs?

A. $160 for the two?

Q. Yes sir?

A. Yes sir.

Q. Do you know what they sold for separately?

A. I cannot tell what they were sold for, but I can give the list price. They were sold for a round sum.

Q. Does it appear whether the two beds just spoken of, of September 18, 1875, of No. 3, plain, and springs, sold for $198.50, were sold to one person or to different persons?

A. It does not appear?

Q. What was the list price of this last bed sold for $160?

A. $140.

Q. On October 9, 1875, was a sale of one bed, No. 3, and spring; do you know what that sold for?

A. $112 for the two.

Q. They were sold in a lump, were they?

A. Yes sir.

Q. And you have no means of telling what they sold for separately?

A. No sir.

Q. What was the list price of the bed?

A. $95.

Q. October 30, one bed, No. 0, three-quarters, springs,

$67.50; can you state what were the separate prices for which they were sold?

A. No sir.

Q. What was the list price of the bed in this instance?

A. 45.

Q. Then you are not able, as I understand, to tell in any of those instances what was the separate price obtained for the articles in the sale?

A. No sir; they were not reported; always reported in gross.

Q. I understand the substance of all this testimony about sales is this: That you made sales from your store in Philadelphia to consumers, and sales to parties who were in the trade in the city of Philadelphia also?

A. Yes sir.

Q. Outside of the city of Philadelphia you sold to the branch house in New York, and to the special agencies in Boston, Baltimore, Chicago and Pittsburg, and you sold by travelling salesmen, and that is all, is it not?

A. No sir; we sold that way, and sold also on orders from different parties by letter.

Q. That did not come at the instance of travelling salesmen or otherwise?

A. Yes sir.

Q. To what class of individuals alone did you sell in quantities?

A. To the branch stores and special agencies.

Q. The other sales were an item at a time?

A. Generally a single item.

Q. The article itself is an expensive one, is it not?

A. Yes sir.

Q. State, if you please, what was the purpose of establishing these branch stores and special agencies?

A. To make an outlet for the sale of these bedsteads.

Q. How were the travelling salesmen paid, by salaries or commissions, or by profits on the goods over and above a fixed rate at which they were furnished?

A. Generally by commissions.

Q. And not by salary?

A. With the exception of only one man, whom I think we paid by salary.

Q. No one had any interest in the sales of the goods over and above a fixed valuation?

A. No sir.

Q. They were not consignees, in other words?

A. No sir.

Q. On page 215 of the testimony you said, in answer to Mr. Mitchell, referring to a letter which he produced, written to Mr. Everitt in reference to No. 11 beds, that there was no dispute between Mr. Everitt and the defendants except as to the monthly accounts, and this letter was produced, referring to the No. 11 bed, a letter, I think, written by yourself, and you said that it did not change your recollection; but you did say that you had not seen the testimony at all, and that most of your testimony was taken long before anything at all in regard to this, which did not seem to be so, referring to this. Have you anything to say about that?

A. Either I did not state correctly, or else I was not reported correctly; but my understanding of my answer to that question of Mr. Mitchell was that it referred to transactions which occurred several years before the taking of this testimony, and that my answer in regard to any dispute between the defendants and Mr. Everitt related to what I knew of former years. The question of the letter did not enter my mind at all. In fact, had the question been asked me whether I recollected seeing it, I would have answered no, because a good many things have transpired which, unless brought to my mind, I would not have called up. The whole matter was an open matter. It was not secret at all; every one knew of the No. 11 bedstead, so that I do not know my object in making such an answer.

Cross-examined.

By Mr. Bowman.

Q. Speaking of this dispute, do you remember the diffi-

culty Mr. Everitt had in getting to see the books of the defendants?

A. I remember an instance in which he asked to see the books, and was refused, I think, for two days. The third day, I think it was, the books were offered to Mr. Everitt by myself,—any book that he chose to look at.

Q. How did you offer them?

A. By making the offer to give him any book he chose to call for, for examination there at the office.

Q. Was Mr. Everitt alone?

A. It strikes me that Mr. Hoffman was in the room.

Q. Then I understand that you manifested a willingness to show him any book that he might call for?

A. Yes sir; because such were my orders from the firm.

Q. Did you so state to Mr. Everitt?

A. I did, as near as I can recollect.

Q. What did Mr. Everitt say?

A. I could not say.

Q. You do not remember what his reply was?

A. I do not.

Q. Did you hand him any books to examine?

A. I did not; no sir; not one.

Q. Why did you refuse to let him examine all the books?

A. I never refused him at all.

Q. Did you know what the firm did?

A. I do not.

Q. In connection with these books do you remember, at the same time, or about that time, having a conversation with Mr. Everitt, in Mr. Kilburn's presence, with reference to the receipts which he had been giving the firm for money paid to him on account of royalty?

A. I cannot say that I recollect any particular transaction.

Q. Do you remember his refusing to sign receipts upon the ground that the amounts paid him he did not think were correct, and that Mr. Kilburn's answer was that he could go behind the receipts at any time if they were not correct?

A. I do not remember Mr. Kilburn ever saying any such thing.

Q. Do you remember any one else connected with the firm saying so?

A. A member of the firm?

Q. Any one connected with the firm?

A. I remember myself saying that if Mr. Everitt could show, at any time, we had not paid him what was due him he could collect it without regard to the receipts given.

Q. And he signed those receipts with that understanding, did he not?

A. I do not know of any understanding with him to that effect.

Q. He refused to sign unless you explained to that effect, did he not?

A. I cannot give a positive answer about that.

Q. What is the best of your rcollection?

A. My recollection is that Mr. Everitt spoke to me, about that time. I cannot recall the time, nor the circumstances, but I do remember Mr. Everitt asking me, one time, if those receipts bound him. I told him that if he could, at any time, show we had not paid him what we ought to, the receipts could not bind him.

Q. I think you have already stated that you are the chief book-keeper of this firm?

A. Yes sir.

Q. And you therefore have a general knowledge of all the books kept by the firm, have you not?

A. Yes sir.

Q. Can you state to me in what books they keep an account of the manufacture of the Everitt bedsteads, and the number made?

A. Yes sir; I can.

Q. What books are those accounts kept in?

A. A small blank book, about 8 by 10 inches.

Q. Do you keep that book?

A. Yes sir; I do.

Q. Is it here?

A. I think not. I know it is not.

Q. Has it been here during this investigation?

A. Yes sir; two or three of them.

Q. Two or three of these books?

A. Yes sir; two or three of the books. They are small books, and as fast as one was used up another was taken.

Q. They are all in existence, are they?

A. I think they are.

Q. Can you tell me where they are?

A. At the office of Hale, Kilburn & Co.

Q. Under your care?

A. Yes sir.

Mr. Bowman: I call for the production of those books.

Q. How many have been here?

A. I cannot say; but I am under the impression that there were, at least two.

Q. From the books which you have examined during the investigation of this case are you able to state how many of the Everitt bedsteads were manufactured by the defendants?

A. I am not able to say, for the reason, that the first, and quite a number, were made by simple day work, without taking an account of the number made or the patterns made.

Q. Did you make up the statements, which were furnished to Mr. Everitt, from time to time, in settling his royalty with him?

A. I did not.

Q. Who did that?

A. The first man that made them out was Mr. John Dimmock, the assistant book-keeper; and the next was John B. Kilburn.

Q. Were they made out under your supervision?

A. Yes sir.

Q. And according to your instructions, from the books?

A. Yes sir.

Q. Can you state whether any statement was ever furnished to Mr. Everitt of the amount or number of bedsteads manufactured by the defendants?

A. None, to my knowledge.

Q. Did you know that he was entitled to such a statement?

A. I did not.

Q. The firm, defendants, instructed you to make out these statements, I suppose?

A. Yes sir.

Q. Did they, or yourself, regulate the basis upon which Mr. Everitt should be allowed royalty?

A. They, always.

Q. Would they go over every item of sale and instruct you what amount to take as your basis upon which to allow him royalty?

A. No sir.

Q. How did they arrange that?

A. There was a fixed discount given to wholesale dealers, and that was the basis on which the royalty was figured?

Q. And the defendants fixed that discount?

A. Yes sir.

Q. Mr. Everitt had no voice in that?

A. No sir; not to my knowledge.

Q. That was what governed you, was it?

A. Yes sir.

Q. And the list price had nothing to it?

A. The list price always had something to do with it.

Q. Did it govern you in fixing the amount upon which you allowed Mr. Everitt royalty.

A. Certainly.

Q. In what way?

A. There was a printed list price of every style and size of bedstead. From that list price, to the wholesale dealers, there was a certain discount; and that list price, less this discount, was the basis on which Mr. Everitt's royalty was figured.

Q. In answer to Mr. Otterson you went over quite a number of sales made to different firms—were they retail or wholesale sales?

A. They were sales to the furniture trade, in small quantities, an item at a time.

Q. They were considered wholesale sales, were they not?

A. Only as designating them from consumers; the term wholesale was used simply to designate the difference between the furniture trade and consumers. It did not indicate large quantities, at all.

Q. Had it any difference in price?

A. I do not get the connection.

Q. Did these firms pay you the retail or the wholesale prices?

A. No sir; they paid us what we call the furniture price.

Q. That would be a wholesale price, would it not?

A. That would be what we call a wholesale price in Philadelphia, as I say, in contradistinction to consumers. These men were allowed a discount.

Q. The books show, as you have already testified, the prices you received for these various articles sold to the various firms?

A. Yes sir.

Q. And the books also show the discount taken off, do they not?

A. Yes sir.

Q. That is, in most cases; sometimes the discount was taken off to a furniture dealer, and no price charged.

Q. Do not all of the sales which you have referred to appear on the books in this way; first, the price obtained for the articles, and, then, the amount of discount taken off?

A. Not in every case,—generally.

Q. And is not the discount, as appears by your books, generally, more than ten per cent?

A. Not to city trade.

Q. What is it to city trade?

A. City trade is ten per cent.

Q. And what to the other trade?

A. To the general furniture trade, outside of the city, 20 per cent. Both are subject to five per cent. for cash, but to special agents and branch stores the discount was still larger.

Q. In referring to articles sent to New York and to different stores, you separated them, and spoke of the charges being

for other goods besides the Everitt bedstead, and when asked what those goods were, you said they were in many instances mirrors and springs; will you tell me how those mirrors and springs were sent with the Everitt bedstead?

A. They were placed in the bedsteads, sent in the same box precisely as the mattress or pillows were, if shipped with the bedstead.

Q. You mean they were made up as a part of the bedstead, do you?

A. No sir; I do not.

Q. Is not the mirror built in the bedstead?

A. No sir.

Q. Was not the bedstead built to receive the mirror, just the same as a frame for a looking-glass?

A. The bedsteads are built either to receive a mirror, or a panel; either can be put in.

Q. But would it not take a differently constructed bedstead for a mirror than for a panel?

A. Not in the least.

Q. Then the mirror would go as a part of the bed, would it not?

A. It would go as part of the bed, yes sir; part of the make up of the bed.

Q. Just the same as a wardrobe with a mirror front in the doors?

A. No sir.

Q. Are they not all part and parcel of the wardrobe?

A. No sir; the mirror in the wardrobe is so arranged that it can be never taken out, but the bedstead is so arranged that the mirror can be taken taken out at a moments notice, and a panel inserted.

Q. That is one of the conveniences of the bed?

A. Yes sir.

Q. Did you ever know of a case where a mirror was shipped off with the bed, unless it was part of the bed and sold with it?

A. I do not remember any such instance. I can remember of a bedstead being sent away without a mirror, or without a panel.

Q. But very few, were they not?

A. There have been such cases. I do not call them all to mind now.

Q. Do know D. F. Haas?

A. I do not think I ever heard the name before.

Q. If the defendants sold him a bedstead, in December, 1877, or in January, 1878, for $300, will their books show it?

A. Yes sir.

Q. Will you be kind enough to turn to that account?

A. I cannot now, because I do not know what we sold, and have no knowledge of the account.

Q. It was sent to the New York branch stores?

A. A great many beds have been sent there that I cannot say have been sold. They are not sold when they go to the New York branch store.

Q. I mean to say it was sold at the New York branch store. (Bill shown witness)?

A. (Referring to the bill.) "January 23, 1878,"—I am not able to say now, without examining all the bills, whether that bed was returned as sold from the New York store.

Q. Can you show me, anywhere in the account which you have furnished as being correct and offered in evidence in this case, any entry of that sale?

A. I cannot; at the present time.

Q. Can you show me, anywhere, the allowance to Mr. Everitt, by the defendants, of royalty on that sale?

A. I cannot now. I would have to look the matter up, being a special thing.

Q. I suppose there is no doubt but that the bill I have shown you is one of the defendants' bills.

A. No doubt but that it is one of the New York store bills. (Referring to the return of sales from the New York branch.) I have the bed. The date was given as January 23, 1878. The bed was sold on December 10th, as the margin of the bill shows, and is returned in their report of December 15th, 1877.

Q. Represented as sold?

A. December 10th.

Q. Represented as sold December 15th?

A. It is in the return of sales of December 15th, 1877.

Q. At what price?

A. $270; which agrees with the bill I have. $300, ten off, leaves $270.

Q. Can you show me the return to Mr. Everitt of that particular bed?

A. I can. (Referring to exhibit No. 10.) In this book the dates are given on which the sales are made in New York, so far as we can ascertain them, and he is credited on December 10, one bedstead, No 14, ebony, three-quarters, list price $225.

Q. How do you know that is this bedstead?

A. Because it is in the return from the New York store, and under the date under which that is charged.

Q. Is that the only bed sold or returned on that date?

A. That is the only one of that number or date.

Q. You say it is the only one of that number and style.

A. Yes sir.

Q. And you say they have allowed Mr. Everitt the royalty on $220?

A. No sir; $225 list. We allowed him royalty on that less the discount.

Q. Ten, and ten, and ten?

A. No sir; it, at that time, was one-third.

Q. Then you have allowed him a royalty on $225, less one-third?

A. Yes sir; which would net $150.

Q. The bedstead sold for $270?

A. The bedstead, with mattress and spring, finished in ebony, graved and gilded, mattress and springs and pillows, were all included in the price of $270.

Q. That information you get from the bill and receipt I showed you, and not from the book?

A. I get it from the return of the New York store, which I have here. I merely used the bill as a reference.

Q. Can you state whether the defendants did any business with Abraham G. Sherwood?

A. I do not know the name.

Q. Please turn to the return from the New York store for February, 1878?

A. In the return of February 2nd, 1878, we have the return of a sale on January 28th, of one Centennial crib and mattress, $125; is that the one?

Q. That is one folding-crib and bedstead, $125?

A. That is the only one of the kind in the February return.

Q. State at what price that was returned to Mr. Everitt?

A. I do not (referring to exhibit No. 10,) find that in the return at all.

Q. I call your attention to the supplemental account (exhibit No 1, shown witness); see if it is in there?

A. (Examining the account.) No sir; I do not find it in here, either.

Q. See if you find it here? (Exhibit No. 2 shown witness.)

A. (Examining the account.) It is not in there.

Q. Look at this account (exhibit No. 3 shown witness,) and see if you can find it?

A. It is not there.

Q. Then there is no evidence of that ever having been returned to Mr. Everitt?

A. No sir.

Q. In that respect, then, the accounts are not accurate?

A. It is evident that that particular item has been left out.

Q. Is that one of the books (book shown witness) that contains the number of bedsteads manufactured by the defendants?

A. Yes sir.

Q. How many of those have you?

A. I cannot say; two or three.

Ajourned until Monday next, December 15th, 1879, at 3 P. M.

Philadelphia, Monday, December 15, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt.

On account of the absence of Mr. Otterson, adjourned until Monday next, December 22d, 1879.

Philadelphia, Monday, December 22d, 1879.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Henry S. Hale recalled and examined.

By Mr. Otterson.

Q. Will you just please explain what are slat-bottom beds?

A. What we mean by slat-bottom beds is just the slats alone, put into the bed crosswise for the mattrass to rest upon.

Q. Do you know anything about this Centennial platform business, and what the arrangement was between your house and Mr. Everitt on the subject?

A. I know that Mr. Everitt was to pay for a part of this, which he did.

Q. Did you see the bill of $90.80, that was presented here for expenditures made on Mr. Everitt's account, and do you know whether the bill was correct or not?

A. Yes sir; that is correct, according to agreement.

Q. Mr. Everitt said that you bought the carpet, and that he objected to it; is that so?

A. It is not.

Q. What part of it is true?

A. I went down to a store on Chestnut street and selected the carpet. The same day I informed Mr. Everitt what I had done, and he went with me to the same store and saw the pattern.

Q. What did you do then?

A. The carpet was purchased and put down on the Centennial space.

Q. Was it purchased by the two of you when you were there together for that purpose?

A. I selected when I went first, and Mr. Everitt went with me afterward, and said that the selection was very good, and the pattern good.

Q. When was it ordered?

A. That day.

Q. Who ordered it?

A. I might have ordered it the first time, At any rate, we went there and decided that that carpet was all right.

Q. What became of it after the exhibition was over?

A. It was delivered to Mr. Everitt. In fact, he took our share of it—the part that was on our space, also.

Q. Do you know anything more about it?

A. No sir.

Q. Do you remember what that carpet cost?

A. I do not remember what the carpet did cost.

Q. Something has been said about experiments that Mr. Everitt was conducting with a view of improving the bedstead, I suppose. Do you know anything about those bedsteads, and if so, what do you know?

A. All I know about that is: I happened in his store one day while the improvement was going on, and he showed the bedstead to me that he was experimenting on, and I looked it over. I saw that it was out of reason, and would not work, and I said to Mr. Everitt, "Now if I were in your place, I would not go to any more expense, because you will never make it work in the world. You might as well try to get into a tub to row yourself." He was trying to balance the bed with springs, without fastening it to the floor.

Q. What was said about the expense of these experiments, if anything?

A. That was all that was said. I told him that if I was in his place I would not go to any more expense, and I believe he dropped it after that.

Q. Mr. Everitt has testified that he acted as one of the agents of your house, having a store in Chestnut street for about a year, and that he was not allowed to make a larger discount

than ten per cent. to the trade upon sales. Do you know at what rate of discount settlements were made with him upon the sales which he himself had made?

A. I do. If you will allow me to see "Exhibit No. 10" I can tell you.

Q. Certainly; refer to it?

A. (Referring to "Exhibit No. 10). The first bed I see here is August 30, 1875, one bed, No. 4, three-quarters, veneered, $95; figured to him at $69.25, that is, 10 and 10, and 10 off; his royalty was figured on $69.25—7 per cent. And also that month and the next month, in October, November, December, the lot of beds we figured at the same rate. January, 1876.—That was figured up to February, 1876, when we changed our discounts to all our wholesale agents, and also changed it to him, and only kept off 20 per cent., to which we figured his royalty.

By Mr. Bowman.

Q. I did not understand your last remark about figuring the royalty; what do you mean?

A. By figuring off the list price, and on the balance figuring his royalty, down from February, 1876, to the end, I should say; that is down to the time he gave up the store.

By Mr. Otterson.

Q. Those were settlements made with him upon sales made by himself as your agent?

A. Yes sir.

Q. And entered in this book (Exhibit No. 10) at the time?

A. Yes sir; and of which he knew all about.

Q. When did you hear any complaint about that mode of settlement?

A. I never heard any complaint up to the time of the commencement of this litigation, except here, in this office.

Cross-examined.

By Mr. Bowman.

Q. You have referred to the carpet in connection with the Centennial stand; where did you purchase that carpet?

A. I think it was McCallum, Crease & Sloan; but I am not

positive; it was a store on Chestnut street; I could not say without referring to the bill.

Q. Do I understand you to say that Mr. Everitt went with you to look at it?

A. To the best of my knowledge Mr. Everitt went with me the same day to look at that carpet, or to look at the same pattern, to see what I had selected. I am very sure of this.

Q. But you are not positive enough about it to swear to it, are you, beyond all question?

A. I swear to it, to the best of my knowledge and belief, that he did go.

Q. And yet you do not remember where it was?

A. I know it was in Chestnut street, and on the lower side, but I cannot tell you the name unless I see the bill. Of course, that would speak for itself.

Q. Do I understand you to say that you gave the carpet to Mr. Everitt?

A. Yes sir; it was delivered to Mr. Everitt after the exhibition was over, at our store.

Q. Do you not know that the carpet which you have referred to was given to Mr. Everitt in trade for his platform?

A. No sir; I do not know; I do not remember anything of the kind.

Q. And do not you know that the platform was Mr. Everitt's, bought by him and paid for with his own money, and that your firm wanted it, and gave him this carpet for it?

A. It may possibly have been we gave him our part of the carpet for his share of the platform; but his part of the carpet, of course, we had nothing to do with, because it belonged to Mr. Everitt, and he took it away.

Q. Where is that carpet to-day?

A. I am not able to tell you; I do not know what Mr. Everitt did with it.

Q. Do you not know that it is in your store?

A. I do not; I know it is not.

Q. Where is this platform of Mr. Everitt's?

A. I cannot tell you.

Q. Have not your firm got it?

A. No sir; not to my knowledge.

Q. You removed it, did you not, from the Centennial?

A. We built a new stand at the Centennial.

Q. And took the platform away, did you not?

A. The old platform was taken down.

Q. And taken away by your firm, or some one in their employ?

A. Of course; but whether his share was taken by our concern or not, I could not say.

Q. Mr. Everitt never got it?

A. Well, I could not say as to that.

Q. You were asked about the discount allowed to Mr. Everitt when he had the store on Chestnut street as your agent; do you not know that the 20 per cent. of which you spoke in your examination-in-chief was the discount which you allowed to your wholesale agents only?

A. I know it was the discount we allowed Mr. Everitt and our wholesale agents; those who bought our beds in quantities and took the sole agency of selling the beds and pushing the beds, in whatever localities they were. To the retail customers, to whom we sold only one bed at a time, we did not take off so much of a discount, and in a great many cases we sold for net.

Q. It was not the discount you allowed to the general trade, was it, in this city and other cities in this county?

A. Well, I think not. It is the discount we allowed to the wholesale trade.

Q. When you say "wholesale trade" do not you mean to your whole agents?

A. Yes sir.

Q. Do you know Mr. Stark?

A. Yes sir.

Q. Were you present when his patent was purchased and the assignment taken?

A. No sir; I was not.

Q. Did not you write the due-bill which was given at at time?

A. I did.

Q. Was not the due-bill a part of the first money for this patent?

A. I wrote his due-bill and handed that due-bill to Mr. Kilburn. I was very busy at the time, and went out. Mr. Kilburn, of course, handed it to Mr. Stark, but I was not present when that was done.

Q. Did you know that it was for the purchase of the Stark patent?

A. Yes sir.

Q. When was that?

A. That was in the early part of February.

Q. Before this suit commenced, was it not?

A. Yes sir; I think it was the 23d day of February, the day the due-bill was written.

Q. How long after the purchase was it before you received the assignment of the patent from Stark?

A. I never received any assignment.

Q. Who did receive it?

A. I do not know that anybody did. I never saw an assignment until the assignment came up. I can tell by looking it up.

By Mr. Otterson.

Q. Came up where? Do you mean before this meeting?

A. Yes sir; came up before this meeting, sent up from Washington by Mr. Mason, (referring to the assignment, exhibit No. 41.) It was about the 28th day of December, 1878, that I first saw that assignment.

By Mr. Bowman.

Q. But you knew that your firm owned it long before that, did you not?

A. I knew he had bargained for it.

Q. And knew that you had paid your money for it, did you not?

A. Yes sir; but, as I understand it, the assignment was to

remain in Mr. Mason's hands, which it did, and I never saw it until the date above mentioned.

Q. If it be true that your firm owned the Stark patent and bought it and paid for it, can you explain why the suit was brought in the United States Circuit Court in the name of Stark, after you owned his patent, against yourselves?

A. The only way I can explain that, is, that the suit was brought under the sole advice of Col. R. Mason, of Washington.

Q. Was it not done for the purpose of compelling Mr. Everitt to make some terms with you by which you could get about five-sevenths of his royalty?

A. It was done to see, as I understand, if it would not have some bearing upon Mr. Everitt, as he had repeatedly refused to have anything to do about the purchase of the Stark patent, time and time again, and we felt as though, after buying this Stark patent, he ought to be made to pay some portion of it; and, under the advice of Col. Mason, as I said before, this suit was brought.

Q. That is hardly an answer to my question. Was not the object of that suit, and the sole one, to get Mr. Everitt to reduce his royalty, or to make some terms with you, by which you would get five-sevenths of his royalty?

Mr. Otterson:—That question the witness has already answered, and I do not suppose it gains strength by repetition. The witness has already said that it was done with a hope of having some bearing on Mr. Everitt upon that subject.

The witness:—The five-sevenths part of it, then, was simply an offer, as I understand it, on Mr. Mason's part. We never was able, in all this trouble, to get a single offer out of Mr. Everitt in any shape or form, or even able to get one-seventh of his royalty even, as an offer.

Q. But, at this time, your firm owned the Stark patent, and you had procured a suit to be brought against yourselves, and, if you had succeeded in getting five-sevenths of Mr. Everitt's royalty, do you mean to say it would have gone to Mr. Stark?

(Mr. Otterson objects to the witness being catechised as to what would be the legal effect of the suit, and because the

counsel seems to have overlooked the fact that the record shows that the assignment of which he is speaking was, at that time, and for a long time afterward, held in escrow, and had never been delivered to the defendants.)

A. I do not.

Q. Where would it have gone?

(Objected to by Mr. Otterson.)

A. I have not got as far as that. I do not know where it would have gone. We never expected to get that.

Q. Would not those five-sevenths have gone into the Company's pocket and out of Mr. Everitt's?

A. If Mr. Everitt had consented to it, probably it would.

Q. Why was all this purchase and transfer from and by Stark so carefully concealed from Mr. Everitt?

A. I cannot tell you. We acted under the advice of Col. Mason in regard to that matter.

Q. If it is correct, as you said, that you are anxious for Mr. Everitt to enter into some arrangement by which the Stark patent could be controlled, why did you not tell him that it could be bought for a few hundred dollars?

A. He was told that it could be bought for one thousand dollars, and Mr. Everitt replied that he would have nothing to do with it; that it was good for nothing; that he knew all about it long before we purchased his patent, and he would not have anything to do with it. He said that, repeatedly, in our office, in my presence, to Mr. Kilburn. That was before the purchase of the Stark patent.

Q. Do not you know that after your firm had the title to the Stark patent you told Mr. Everitt it could be bought from Stark, if he (Everitt) would allow Stark five-sevenths of his royalty, which he (Mr. Everitt) refused to consent to?

A. I think Col. R. Mason, in Mr. Mitchell's office, said something to that effect.

Q. Did not you and Mr. Kilburn say the same thing to him in your own office?

A. No sir; not to my face; possibly Mr. Kilburn did.

Q. If it be correct that your firm had purchased the Stark

patent and had an assignment of it before the commencement of this suit, how can you reconcile the fact of your firm, you included, having sworn to the answer in this case that you were not the owners of the Stark patent, and that it had not been assigned to you?

A. For the very reason that we understood from Mr. Mason that it was not an assignment, as it was placed in his hands in escrow,—and we thought we were perfectly right in making that statement?

A. And that is the reason why you swore to the answer, is it?

(Mr. Otterson objects to the witness being called upon to answer the question twice.)

A. That is the reason, because I always understood that it was not to be considered an assignment until it was delivered.

Q. Then I understand you to say that your firm bought the patent and paid it before you had the title to it, by assignment or any other writing?

A. Yes sir; to the best of my knowledge.

Q. Do you not know that Mr. Kilburn went to Washington and had the assignment duly and regularly prepared, and that it was executed and kept from the record, by Mr. Mason's advice, so that Mr. Everitt would not know it?

Mr. Otterson: (to the witness.) If you were there, and knew it, you can answer that question. If not, not.

Mr. Bowman:—If he knows it, he can answer it, and I object to the witness being told what he can answer.

Mr. Otterson:—And I object to this kind of examination.

The witness:—I do not know it, only from hearsay.

By Mr. Bowman.

Q. From whom did you hear it?

A. All that I ever heard anything about it was from Mr. Kilburn, and I will here say, now, right here, that Mr. Kilburn told me, when he returned from Washington, that, in effect, there was no assignment made; that the paper was placed in Mr. Mason's hand for him to keep in trust, and that it would be no assignment until it was delivered. That is what I always understood.

Q. When you first refused to pay Mr. Everitt his royalty, on what ground did you refuse?

A. I do not remember.

Q. Why did you not pay him, then, without any trouble?

A. I think there was a time when we refused him for a short time on account of the number 10 and 11 beds, which were not a part of his patent, and we thought we ought not to pay a royalty on them; but afterwards we did allow it, to save trouble.

Q. But I refer to the last refusal—on May 10th., 1878?

A. That was on account of this Stark patent, and also the Maine patents.

Q. When did you first learn of Stark?

A. It was in the early part of February, 1878.

Q. Who brought him to your notice?

A. My brotner, J. Warren Hale.

Q. I understand you to say you withheld Mr. Everitt's money on account of the suit commenced against you by Stark, is that it?

A. I think the suit had not been commenced then. It was on account of the Stark patent. We were trying all the time to make some arrangement with Mr. Everitt.

Q. You had received a note from Mr. Mason threatening suit by Stark, had you not?

A. Yes sir.

Q, And then you notified Mr. Everitt of this threatened suit?

A. Yes sir—showed him the letter the very day it was received.

Q. Your firm had paid for the Stark patent at that time, had they not?

A. Paid for a portion of it. I do not think we had paid for all of it.

Q. And Mr. Mason was then your attorney, also, was he not?

A. He had that matter in charge; yes sir.

Q. And on account of that notice from Mr. Mason you

then called Mr. Everitt's attention to it, and you stopped paying him royalty?

A. I think we paid him some money after that letter was received.

Q. You are not sure about that, are you?

A. I am very sure, pretty sure of it—after that letter was received.

Q. Did not you claim that you could not settle with him as you would have to detain the money to await the result of the Stark suit, and he would have to bare his share of the expenses of it?

A. I think I told Mr. Everitt, myself, that we could not pay him any more in the face of these two patents. the Stark and the Maine patents.

Q. And the suit?

A. No sir; I did not mention anything about the suit. It was the Stark and the Maine patents that I mentioned at that time.

Q. Who paid the cost of staying the case in the United States Court?

A. Of staying it?

Q. Yes sir; or discontinuing it?

A. I really could not say; I do not know as it has been paid.

Q. You do not know who paid the costs in that suit?

A. No sir; I do not. I do not know that it has been paid.

Q. I produce and show the order of discontinuance, and containing the following language (The order of discontinuance shown witness) "It is agreed that the above entitled case may be dismissed upon the payment of costs by the defendant, R. Mason, solicitor for plaintiff."?

A. I remember, now, taking that document down to court; but nothing has been as yet paid on it by us. I am positive nothing has been paid by us.

Mr. Otterson:—The first I knew of that having been discontinued is the production of this paper by Mr. Bowman.

Q. Where did you get that paper from?

A. That came from Mr. Mason.

Q. He sent it to you for that purpose, did he?

A. I think so.

Q. Your firm paid Mr. Mason, of course, for his services in the case?

A. I cannot say.

Q. Do not you know?

A. No sir; I do not.

Adjourned until Monday next, December 29, 1879, at 3 p. m.

Philadelphia, Monday, December 27, 1879.

Parties met at the office of the Master:

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Henry S. Hale, Mr. J. Warren Hale.

J. Warren Hale affirmed and examined.

By Mr. Otterson.

Q. You are connected with the Hale and Kilburn manufacturing company, are you not?

A. I am.

Q. In what capacity?

A. Secretary.

Q. Do you remember the visit of Mr. Stark to your counting house?

A. I do.

Q. Do you remember when it was?

A. It was in the early part of February, 1878, along about the first of February.

Q. Had you ever seen Mr. Stark before?

A. Never.

Q. Had you ever heard of him before?

A. No sir.

Q. Who was there when he came in?

A. I was there, alone, in the office, when he came in.

Q. After his visit, upon that occasion, with whom did you communicate, first, and, how soon afterward?

A. To Mr. Everitt.

Q. How soon after Mr. Stark's visit?

A. He came in the morning, and this was in the afternoon.

Q. What did you tell Mr. Everitt?

A. I told Mr. Everitt that a man named Stark had been there from Topeka, Kansas, and said that our folding-bed was an infringement on his patent.

Q. What reply did he make?

A. Mr. Everitt said "pooh! it don't infringe; let him snap his whip—or crack his whip;" or something like that.

Q. Did you hear anything more about the Stark patent, or have anything to say to Mr. Everitt about the Stark patent?

A. No sir; I did not.

Q. Did you hear any part of the conversation between him and Mr. Kilburn?

A. I heard Mr. Kilburn talking with him frequently about it, afterward; every day; that is, when Mr. Everitt was in. I heard Mr. Stark's name mentioned in the conversation. I did not particularly know what was said besides that.

Q. Did you know what they talked about, except that they talked about Stark?

A. I heard Mr. Kilburn ask Mr. Everitt what he was going to do about it. I do not recollect now what reply Mr. Everitt said, because I was in and out all the time in the office.

Cross-examined.

By Mr. Bowman.

Q. Did you have anything to do with the purchase of the Stark and Maine patents?

A. No sir; I did not.

Q. Who attended to that part of the business?

A. Mr. Kilburn.

Q. Do you know, of your own knowledge, when these patents were purchased by your firm?

A. Which one do you mean?

Q. The Maine and Stark patents, or either of them.

A. Well, the Stark patent, I suppose, was purchased the last of February, but I did not see any assignment or any such thing of it.

Q. In February of what year?

A. In 1878.

Q. Do you know when the assignment was made to your firm?

(Objected to by Mr. Otterson, because the assignment is in evidence, and speaks for itself.)

A. The first assignment I ever saw in December; I think the 28th of December; along about the first of January, 1879.

Q. My question was:—When was the assignment executed, if you know?

A. That I do not know. I never saw it, except that one, in 1878. I do not know of any other.

Q. Did you know anything about the suit which was brought in the United States Circuit Court, by Stark, against your firm?

A. No sir; only by hearsay.

Q. You know the company paid for the Stark patent, do you not?

A. I suppose they did; that is, I saw a due-bill.

Q. That due-bill was paid, was it it not?

A. Yes sir.

Q. When was that paid?

A. It was paid along at different times.

Q. Well, what time?

A. I cannot tell you.

Q. Was it prior to November, 1878?

A. Yes sir.

Q. Was the last due-bill for the Stark patent paid prior to November, 1878?

A. I know of only one due-bill.

Q. You know of only one due-bill?

A. Yes sir.

Q. Was that the only one given in payment of this patent?

A. To my knowledge.

Q. And that was paid in full, prior to November, 1878?

A. I think so; yes sir.

Q. Then you knew prior to November, 1878, that the patent belonged to your firm?

A. I did not know it belonged to our concern, wholly.

Q. Did not you feel as certain of that as you do now of anything you have in this world?

A. I thought it was held by Col. Mason, in escrow.

Q. Why did you suppose anything of that kind?

A. Only from hearsay.

Q. Who did you ever hear say that Cononel Mason held it in escrow?

A. Mr. Kilburn.

Q. Which one?

A. Cheney Kilburn.

Q. That was since this suit, here, within a few weeks or months?

A. No sir.

Q. Do you mean to say that you understood that Stark assigned it in escrow for your firm?

A. Please repeat that question.

Q. Do you mean to say that you understood that Stark assigned that patent to Mr. Mason, to be held in escrow for your firm?

A. I mean to say that it was assigned to Colonel Mason to be held in escrow.

Q. For whom?

A. For our benefit.

Q. Was not Colonel Mason your attorney?

A. Yes sir; that is, as far as my knowledge goes. I do not know anything; I had nothing to do with Colonel Mason, at all.

Q. You knew he was counsel for your firm in this matter did you not?

A. I suppose so.

Q. You suppose so; that is, you have seen nothing done in consultation about this very matter?

A. Not to my knowledge.

Q. Do not you know that the money of your firm paid him for his services in this matter?

A. No sir; I do not.

Q. I will go back. Did not you know, prior to November, 1878, that your firm had the full and absolute title to the Stark patent?

A. No sir; I did not.

Mr. Otterson:—I wish the master to note that the evidence is to the contrary, and that it is evidence offered by the other side.

Mr. Bowman: (To Mr. Otterson.) I do not want to contradict you; but I am going by the record.

Mr. Otterson:—I do not think it is fair to put the question to the witness in that form.

Mr. Bowman:—I am going by the record.

Mr. Otterson:—You are going contrary to the record.

Mr. Bowman:—I hold your answer in my hand for that.

Mr. Otterson:—Then it is all right. I stand by the answer.

By Mr. Bowman.

Q. Did you ever consult with Mr. Mason about this patent?

A. No sir.

Q. Or the Stark patent?

A. No sir.

Q. And you did not know that he held the assignment for your benefit?

A. By hearsay.

Q. That is, you heard Mr. Cheney Kilburn say so?

A. You did not pay your money for the patent without knowing that it was yours, or was subject to your control, did you?

A. I suppose it was subject to our control.

Q. Who paid the money?

A. The firm.

Q. You are one of them, are you not?

A. Yes sir; the Hale & Kilburn Manufacturing Company.

Q. Who paid it to Stark for the firm?

A. It was paid at different times; I cannot tell you. The Hale & Kilburn Manufacturing Company paid it. I might

have given Mr. Stark fifty dollars, and Harry might have given him fifty dollars, and some one else might have given him fifty dollars.

Q. If you knew and felt certain that this patent belonged to your firm, and your firm had control of it, before and after you paid for it, why did your firm get Stark, after you had purchased the patent, to bring suit against you for infringing against his patent, when the patent, in point of fact, belonged to your firm?

A. That was in the hands of Colonel Mason.

Q. Did Colonel Mason do that without any direction from you or your firm?

A. Without any direction from me.

Q. And you say without any from your firm, or any member thereof?

A. That I cannot say, because I did not hear that.

Q. Did not you know that that was an arrangement entered into on the part of your firm for the purpose of getting Mr. Everitt to make some allowance to your firm, or some reduction in the amount of his royalty?

A. I know that we tried—at least I did not; I did not have anything to do with it—but by hearsay I know that we tried to have Mr. Everitt do something.

Q. That is you wanted him in that suit to allow Mr. Stark five-sevenths of his royalty, did you not?

A. That I know nothing of.

Q. That you knew nothing of?

A. No.

Q. Did you never hear it from your firm, or the members of it?

A. No sir.

Q. You never heard it spoken of by any one?

A. No sir.

Q. Well, that suit was afterward stopped at the direction of your firm, was it not?

A. That I know nothing of.

Q. But you do know that when that suit was brought Stark

had no interest in his patent—you had bought it and paid for it long ago?

A. That was under the advice of Col. R. Mason.

Q. What was?

A. The suit.

Q. Why was Mr. Mason to do that; what was it for?

A. I do not know; I had no cunversation with him.

Q. It was not to benefit Mr. Everitt, was it?

A. That I know nothing of.

Q. That you knew nothing of?

A. No sir; only by hearsay, that there was a suit started; that was all.

Q. Who did you hear say this?

A. I might have heard my brother; I might have heard Cheney Kilburn; that I could not say.

Q. If you owned that patent at the time which you have stated, and had control of it, why did you swear in your answer that you had not the control over it, and had not the assignment of it?

A. I did not know that we owned it—always understood that we did not—when it was held in escrow by Colonel R. Mason.

Q. Did not you know that it was assigned to your firm, and that your attorney, Colonel Mason, simply held it to keep it from record, in order that Mr. Everitt might not find it out?

A. I did not know it was assigned; I never saw any assignment until December 28, 1878, or along about the first of January, 1879.

Q. Then previous to your assignment you believed that you owned it outright?

A. No sir.

Q. When you pay for a thing and give full value according to agreement, do not you consider that the thing paid for belongs to you?

A. When the thing was held in that shape I did not know it belonged to the concern.

Q. Do you mean to say, as a business man, that when your

firm paid full value and consideration for that patent, you did not know it belonged to your firm?

A. I do; most assuredly.

Q. Is that your habit of doing business?

(Objected to by Mr. Otterson.)

A. We do not always do business in that way.

Q. And you do not always purchase things in that way?

A. No sir.

Q. Will you explain why you did it in this case?

A. I did not have anything to do about purchasing this.

Q. How long have you been a member of this firm?

A. This firm has changed, you know.

Q. Yes sir; from a firm to a corporation.

A. Yes sir; I have been there eleven years; that is, from the old concern to the new one.

Q. What branch of business do you attend to?

A. General; looking after the things in general.

Q. Have you anything to do with the books?

A. No sir; not particularly with the books.

Q. You hold the position of secretary, I believe?

A. Yes sir.

Q. Do you do all the correspondence?

A. No sir.

Q. Some of it?

A. Some; yes sir.

Q. Did you ever correspond with Mr. Stark, in Kansas?

A. No sir.

Q. At no time?

A. No sir.

Q. Nor anywhere else?

A. No sir.

Q. Do you remember seeing Mr. Everitt shortly after Mr. Stark saw you at your store?

A. I do.

Q. Do you remember Mr. Everitt saying to you that he would like to see Stark, and that you said he had gone to

Washington, and when he returned you would tell him that Everitt wanted to see him?

A. No sir; I remember no such thing.

Q. What did Mr. Everitt say to you on that occasion?

A. He said: "Pooh! it don't infringe; and let him snap his whip, or crack his whip," or something like that.

Q. Was that the only time you saw Mr. Everitt?

A. It was the only time I saw Mr. Everitt to talk with him about that thing, because Mr. Kilburn had all the conversations with him about it.

Q. When Mr. Stark came back from Washington how long was he in Philadelphia?

A. I do not know; he was here some time.

Q. At your store, every day?

A. In and out; I cannot say every day.

Q. During the time he was here did you notify Mr. Everitt that he was here?

A. That I cannot say.

Q. You did not, did you?

A. I do not remember ever notifying Mr. Everitt that Stark was here.

Q. Did you ever tell Everitt that Stark was here?

A. No sir.

Q. When Mr. Stark came back from Washington did you tell Mr. Everitt that Mr. Stark was here as his antagonist in this business?

A. No sir.

Q. Then you gave no notice to Mr. Everitt that Mr. Stark was here trying to get his interest in this business?

A. I had nothing to do with it.

Q. Did you see Mr. Everitt at all, or have any communication with Mr. Everitt about Mr. Stark's being here, or give Mr. Everitt an opportunity to see Stark and consult with him about his interest in this patent?

A. No sir; Mr. Kilburn always saw Stark; it was his business to attend to that.

Re-examined.

By Mr. Otterson.

Q. I understand you to say, in your direct examination, that on the same day that Stark came to your counting-house, in the after part of that day, Mr. Everitt came in, and told him that Mr. Stark had been there?

A. When I answered that before I meant after Mr. Stark came back from Washington.

John L. Kite, affirmed and examined.

By Mr. Otterson.

Q. What is your business?

A. I am a mechanical engineer, machinist, and expert in patent cases.

Q. Have you examined the letters patent with reference to these several beds—the Maine, the Stark, and the Everitt—in conjunction with the models that are here in evidence?

A. I have.

Q. What is there in the Everitt patent that it not covered by the Maine and the Stark?

A. As far as I understand them, there are two points in the Everitt patent which are not covered by the patents of Stark and Maine.

Mr. Bowman: (To Mr. Otterson.) Do you call this witness as an expert?

Mr. Otterson:—Yes sir. (To the Witness.) I understood you to say that you were an expert in patent cases.

The Witness:—Yes sir; in patent cases.

Mr. Bowman:—I object to this witness being examined on this subject.

By Mr. Otterson.

Q. What has been your connection with patent cases heretofore?

A. I have been a witness in suits for infringement.

Q. Have you been an examiner of patents?

A. I am a patentee and inventor, and familiar with the wordings and description of patents and drawings.

Q. You have examined these models and drawings, have you?

A. I have.

Q. You were about to state the two points,

Mr. Bowman:—I object to this witness. I do not think he is an expert in a legal sense, any more than any other machinist or mechanic; and, in addition to that, I do not think this is a material or proper question for inquiry here.

By Mr. Otterson.

Q. Go on and state the two points of difference.

A. The two points of difference which I noticed as being in the Everitt patent and not contained in the other two named, are the use of the counterbalancing weights, and the projection of the brackets on the foot board above the end of the bed-frame when closed.

Q. Do you understand the counterbalancing weights to be one of the claims of the Everitt patent?

A. No sir; not in the claim. It is not claimed as such.

Q. Then it is not in the patent, is it?

A. It is described and shown in the drawings, I believe. It is not specially claimed.

Q. Is it protected by patent—are the counterbalancing weights protected by patent?

A. There is no claim made for the use of that weight.

Q. But there is a claim, however, for the brackets?

A. That is included in one of the claims.

Q. The brackets?

A. The brackets; yes sir, extending above the head of the bed frame.

Q. Well, do not the letters cover the brackets, and do they cover the counterbalancing weights?

A. The letters are used in refering to these brackets; but I think not in reference to the weights.

Cross-examined.

By Mr. Bowman.

Q. What is your residence?

A. 2806 Poplar street.

Q. What is your business?

A. I am at present a consulting engineer and mechanic.

Q. Have you a place of business?

A. No office except in my house.

Q. Not employed at any place?

A. No sir.

Mr. Otterson:—We rest.

Adjourned until Tuesday, January 6, 1879 at 3 p. m.

Philadelphia, Monday January 5, 1880.

Parties met at the office of the Master.

Present:—the Master, Mr. Bowman, Mr. Everitt.

On account of the absence of Mr. Otterson, adjourned until Thursday next, January 8, 1880, at 3 p. m.

Philadelphia, Thursday, January 8, 1880.

Parties met at the office of the Master.

Present:—the Master, Mr. Bowman, Mr. Everitt, Mr. Otterson.

On account of the absence of a witness, adjourned until Monday next, January 12, 1880, at 3 p. m.

Philadelphia, Monday, January 12, 1880.

Parties met at the office of the Master.

Present:—the Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. Henry S. Hale.

Mr. Otterson: (To Mr. Bowman.) I desire to examine one more witness on the subject of this patent, and as it will not take much time, I suppose you will not object.

Mr. Bowman:—It may be proper for me to say that at the last meeting Mr. Otterson announced that he had closed his case, but during the time intervening between then and now, he stated to me that he had an expert whom he wished to call, which would take but a few minutes, and I told him that personally I had no objection to his doing so. I think it, how-

ever, ought to be distinctly understood that the case is not to be reopened for the defence, and a number of witnesses called.

Mr. Mitchell: (To Mr. Otterson.) Have you any other witnesses you desire to call?

Mr. Otterson :—No sir.

Mr. Mitchell:—Then I think you ought to be allowed to call this witness.

Rudolph Melville Hunter, sworn and examined.

By Mr. Otterson.

Q. What is your business?

A. I am a consulting engineer, expert, and solicitor of american and foreign patents.

Q. You are a graduate of what school?

A. Of the Polytechnic, in this city.

Q. Have you been engaged in patent cases, and the examination of patents?

A. I have.

Q. In what capacity?

A. As an expert.

Q. State if you have examined the patents and the models, in this case?

A. I have.

Mr. Mitchell: (To Mr. Otterson.) I would like to cross-examine the witness as to his claim to being an expert in this matter, before you proceed with his examination as to the merits of the invention.

Mr. Otterson :—I have no objection.

By Mr. Mitchell.

Q. When did you graduate at the polytechnic school?

A. I received my diploma in the summer of 1878; but I was in practice, as an engineer, for about six years before.

Q. Have you ever been called as an expert in a patent case?

A. I have; many a time.

Q. To what special branch of art or science have you devoted yourself?

A Engineering; construction of machinery; or any patentable article.

Q. When you say, "patentable," you really do not mean to go to machinery, do you?

A. I do.

Q. Are you an expert in chemistry?

A. To a certain extent; but I do not practice as such.

Q. And in medicine?

A. I understand medicine, to a certain extent; but I would not practice as an expert, in such a case.

Q. And electricity?

A. Yes sir; to a certain extent, my profession as an engineer requires me to understand those branches, and I have studied all of them.

Q. What special knowledge have you of the manufacture of furniture?

A. None, excepting that which any patent solicitor and engineer would have to have, if called into an examination, to take out patents upon the same, or seeing them in public use and observing their construction.

Q. I mean what special opportunity have you had to learn the construction of furniture?

A. None but my observation.

Q. Has that been any specially instructed observation?

A. It has.

Q. Where did you get that special instruction in the manufacture of furniture?

A. Do you mean, by instruction, going into a manufactory and examining each operation, specially?

Q. I mean all the entire means of becoming specially informed and expert upon the manufacture of furniture?

A. I have observed some of the operation of the construction of furniture, after it has been put before the public.

Q. Have you had any special instruction in that matter?

A. I am not a cabinet maker.

Q. But have you had any special instruction in the manufacture of furniture?

A. No sir; I never served as an apprentice to a cabinet maker.

Q. Being a cabinet maker, and having served as an apprentice to a cabinet maker, are only two methods of gaining special information in regard to the manufacture of furniture—my question was whether you had any special instruction at all?

A. I have not had any special instruction.

Mr. Mitchell:—I object to the witness as an expert in this case.

By Mr. Otterson.

Q. Go on, and state whether you have examined the models that have been offered in evidence, here, and whether you have examined the several patents, and state what there is that is novel in the Everitt patent?

A. I have examined the models, and also the patents—have you the patents here?

Q. Yes sir. (The patents produced by Mr. Otterson, and handed to the witness.)

(Mr. Mitchell objects, as the testimony is not relevant to any issue before the Master.)

A. I have examined the patent to Everitt, which contains two claims, the first only of which has any novelty, and that being the combining a hinged footboard, lettered "E" in his patent, with several other parts, which are all old.

Q. The hinged footboard is not new?

A. No sir; the novelty is the combining of that hinged footboard with these old parts. The combination is novel, but of no value.

Q. What is it combined with?

A. The hinged foot-board "E" is combined with a headboard, a baseboard, side rails, and a moveable bottom board. I have used the wrong expression in speaking of this claim. I meant removable bottomboard, instead of the footboard "E."

Q. That is the combination—have you examined the model made under the Everitt patent?

A. I have.

Q. Does the model show that combination as in use by the defendants?

A. Not to my knowledge, it does.

Q. Do you understand my question? My impression was the other way. I asked the question whether the model shows the combination that you refer to, the novel combination, as in use by the defendants?

A. I mistook the question. The removable footboard is not used in the bed as built by the defendants; but is shown in the model.

Q. Is any part of that novelty in the Everitt patent used in the defendant's manufacture?

A. It is not.

Cross-examined.

By Mr. Mitchell.

Q. Where is your office?

A. 901 Walnut St.

Q. Are you alone?

A. I am alone; with my clerks.

Q. Did you ever see the defendants manufacture these beds?

A. I have seen the beds after they have been manufactured.

Q. Where?

A. At their warehouse.

Q. When?

A. Last week.

Q. When were those beds made?

A. I am not aware as to the date of their manufacture.

Q. Were you informed by the defendants that those were made recently?

A. No.

Q. Were you not informed when they were made?

A. No sir.

Q. You said that one of these points that Mr. Everitt claimed for his patent was new, but of no value. What do you mean by saying it was of no value?

A. Because no one would wish to use it.

Q. How do you know?

A. Common sense.

Q. You have had no experience in the manufacture of furniture, you say?

A. But I have had experience in using it.

Q. Have you used the Everitt bed?

A. No sir; I have not.

Q. What experience have you had in using it?

A. I know plenty who do, and have examined them, and understand their construction perfectly.

Q. Then you have not had any experience, yourself, in using it?

A. No sir; I do not use it.

Q. Who told you it was of no value?

A. No one.

Q. Then how do you know it was of no value, if you have not used it yourself, and know no one who has?

A. As I told you before—common sense.

Q. Whom do know who uses the Everitt bed?

A. I know people who use these folding-beds, which are all constructed substantially the same so far as the main features are concerned; and, in no case, did any one wish to remove the bottom-board, for any pretence, whatever.

Q. Who are the people you are speaking about; name one of them.

A. Some of which are the Hardings; the sons of George Harding, the attorney, at Ninth and Walnut.

Q. Where do they have these beds?

A. At their residence.

Q. Did you see them there?

A. I have.

Q. Were they Everitt beds?

A. They may not have been Everitt beds in exact construc-

tion, yet the broad principle in all these folding-beds is the same.

Q. Who else told you that this was of no value?

A. Nobody.

Q. No one else?

A. No sir.

Q. Then you never used a bed yourself, and you do not know anybody who did, but young Mr. Harding, who used one?

A. There are two Mr. Hardings.

Q. Two; and that is all you know?

A. That is all I know.

Q. You have never used one yourself, and know no one who has used it, to whom you have spoken about it, except the young Mr. Harding; is not that so?

A. No sir; it is not.

Q. Who else has used them?

A. I cannot tell whether I can give you name for name.

Q. I do not want you to do that. I want you to give me one more.

A. Webster.

Q. Who is he?

A. Petroleum manufacturer in this city.

Q. Where does he live?

A. He is a petroleum refiner; 1724 Spruce street.

Q. Has he an Everitt bed?

A. Not now.

Q. Did he have one?

A. I do not know as it was an Everitt bed. He had a folding-bed.

Q. What did he tell you about it?

A. That it did not require any such thing as a bed which would take out the bottom.

Q. Did you see the bed which he had?

A. No; I did not.

Q. When did he tell you so?

A. Recently.

Q. Say when?

A. I cannot give you the date,

Q. Within a month?

A. Within a month.

Q. How did you come to ask him about it?

A. Merely talking about folding-beds.

Q. And is that all the opportunity you have had for observation?

A. I cannot say that it is.

Q. Well, can you name any other person?

A. I am not ready to name other persons.

Q. You are not ready to name other persons?

A. No sir.

Q. You said there were two claims in the Everitt patent?

A. I said there were.

Q. You said there were two claims in Mr. Everitt's patent, only one of which was new?

A. Yes sir.

Q. What special information or experience have you had about folding-beds in the past?

A. You are asking your original question. I have answered that before.

Q. Kindly answer it again; have you studied up the subject of folding-beds?

A. So far as my business required.

Q. How far was that?

A. It is pretty hard to state.

Q. Then tell me how far you have studied up the subject of folding-beds; do you know when the first folding-bed was made?

A. About 1860, anyway.

Q. 1860?

A. 1860, I suppose.

Q. Were there any folding-beds before then?

A. None that I know of, that operated in this manner.

Q. In any manner?

A. Yes sir; I think they were.

Q. What were they?

A. Beds which folded up, with the legs standing out, merely to give room.

Q. When was the first folding-bed made?

A. I am not prepared to answer that.

Q. Have you made any special study of this question, at all?

A. So far as this patent is concerned, I have.

Q. And you are not able to state when the first folding-bed was made?

A. No sir; I am not.

Q. How, then, did you know about the other claim of Mr. Everitt; what is the other claim?

A. It is a combination of a hinged foot-board, with the side brackets raised above the side-rails, as shown, and forming, when the bed is lifted, the side guards for pillows and bed-clothing, as and for the purpose specified.

Q. How do you know that that is not new?

A. Because, in my estimation, it is anticipated by Stark.

Q. You have examined Stark's patent?

A. I have examined Stark's patent.

Q. And there is nothing in this second specification of Mr. Everitt that is included in Mr. Stark's?

A. There is the side brackets extended, but to use them as he constructs his bed would be to infringe the patent of Mr. Stark.

Q. Is not it new?

A. What?

Q. Is it in Stark's patent to use the side brackets that way?

A. The extended side brackets are not, but they form the moulding around the top of the bed.

Q. Where do you find these extended brackets before Everitt's time?

A. In Stark's patent.

Q. You have just said that they were not in Stark's patent.

A. The extended side brackets?

Q. Yes sir.

A. I do not find them anywhere.

Q. Then why is not that new?

A. If you choose to call it new, it is valueless.

Q. I am not an expert, I am asking you. It is not what I choose to call it. You are the expert, and under examination; is it new, or not?

A. Putting the brackets in the form of a moulding around the bed is not new.

Q. That is not what I asked you. I asked you about the extended side brackets; is not that new?

A. I do not know. The extended side brackets form such a molding, and this moulding is claimed by Stark; hence Everitt's use of it is merely a double use, which does not make it new or patentable.

Q. But you said, a moment ago, that the use of these side brackets is described by Mr. Everitt in his patent, and was not in Stark's patent, did you not?

A. The special use of extended sides, or side brackets, is not claimed or shown in Stark's patent; but Stark's claim is sufficient to cover such extended brackets, for he puts them under the name of moulding.

Q. Has he put them under the name of moulding?

A. He has.

Q. Then I understand you to say, now, that the extended side brackets are in Stark's patent.

A. The extended sides are; but he has not extended them sufficiently to call them side brackets, as indicated in Everitt's patent.

Q. Kindly say definitely, whether they are in Stark's patent, or whether they are not, the extended side brackets; are they in Stark's patent, or are they not?

A. The extended side brackets are not shown in Stark's patent, but the bracket itself is shown,—only of inferior dimensions, which, if extended sufficiently high, would form the side brackets shown in Everitt's patent.

Q. You lead me one question further;—are the side brackets extended sufficiently high in Stark's patent?

A. For what?

Q. To be the same thing as Mr. Everitt has claimed for.

A. I do not quite get your meaning.

Q. I am trying to use your language as far as possible, although I confess I do not entirely understand it, but that may be my own fault. Are the side bracket in Mr. Stark's patent extended sufficiently high to be the same thing that is claimed by Mr. Everitt?

A. Side brackets are side brackets, whether they are ten feet long or two inches.

Q. Kindly answer the question I have asked.

A. I have answered it.

Q. Have you anything more to say in answer to it?

A. I have nothing more to say in answer to it—do you wish that answered again?

Q. I would like to have an answer to it. I do not know that it has been answered before. I do not want it answered again; but I do want it answered now for the first time.

A. Mr. Stark's side brackets and Mr. Everitt's side brackets are one and the same thing, the only difference being that one makes them about twice the depth as the other.

Re-examined.

By Mr. Otterson.

Q. Then I understand you to say that the principle of the Everitt side bracket is precisety the same as the moulding in the Stark patent. In the one it is called a moulding, and in the other a side bracket—is that so?

A. It is.

Q. But the principle is the same?

A. The principle is precisely the same, though in Everitt's case he merely puts pillows and clothing behind, to give it another name.

Mr. Otterson:—Now, we close.

PLAINTIFF'S REBUTTAL EVIDENCE.

Asher B. Stevens sworn and examined.

By Mr. Bowman.

Q. Do you know the defendants?

A. The Hale & Kilburn Manufacturing Company?

Q. Yes sir.

A. Yes sir.

Q. Do you know the gentlemen who compose that corporation?

A. I believe that Cheney Kilburn is the president; Henry S. Hale is the secretary; J. Warren Hale, or Warren Hale—I am not sure which—is the treasurer; and I believe that there are some stockholders whom I know, although I do not know all. I think Mr. Newcombe and Mr. Folger are stockholders, and Mr. Artemus Kilburn. I do not know that I am acquainted with any others.

Q. Who did you say was treasurer?

A. I think it is Warren Hale, or J. Warren Hale—I am not sure which.

Q. Have you had any personal acquaintance with any of these gentlemen. and if so state which of them?

A. I have had personal acquaintance with all these parties that I have mentioned.

Q. When did you first become acquainted with them?

A. In the year 1875; the 28th day of October, in the year 1875. I came into Philadelphia with a chair, and exhibited to Mr. Cheney Kilburn, in the office of Kilburn & Gates, which was then on Market street.

Q. Did you ever have any connection with them in reference to the Everitt bedstead and its improvements;

A. Yes sir; the connection commenced, indiretly, at that

time. I made a contract with Mr. Kilburn to perfect certain inventions. I had several plans, and made a contract to perfect the invention there. That contract provided that I should pertect the inventions.

By Mr. Otterson.

Q. Was that in writing?

A. Yes sir.

Mr. Otterson:—Then stop where you are.

By Mr. Bowman.

Q. Where is that contract?

A. The contract was bought up, and I delivered my copy over to the company, before I left, in 1878.

Q. Then whatever contract or papers there may be, connected with it, the company have?

A. Yes sir.

Q. The defendants.

A. Yes sir.

Mr. Bowman:—Now, I ask where those papers are?

Mr. Otterson:—You have had them here, and they have been offered in evidence.

The Witness: I do not think that contract has been offered in evidence—you have had no means of knowing about it.

Mr. Otterson:—(To the witness.) I do not want you to state what has transpired here—you do not know what has been offered in evidence here, because you have not been here to know.

The Witness:—Perhaps I can clear that up: I have read all the evidence.

Mr. Otterson:—At whose instance was that?

Mr. Mitchell:—I will answer that question. It was by my instruction.

By Mr. Bowman.

Q. I am asking you about your relations with these defendants, in connection with the Everitt bedstead and improvements, and you were proceeding to state about your having a contract with them in relation to the Everitt bedstead.

A. Yes sir; this was a general contract in relation to all

improvements, that I was bound to sign over to them everything—and I went to work at the chair, and perfected that; and another contract was drawn. This general contract provided that when the invention was perfected—

Mr. Otterson:—I object to the witness speaking, here, in oral evidence, of papers that are in writing.

By Mr. Bowman.

Q. You are speaking of a writing, are you?

A. Yes sir.

Q. Where is that writing?

A. It is in the hands of the defendants. At least, it was there when I last saw ir.

Mr. Bowman: (To Mr. Otterson.) Unless you produce it, I will ask the witness to state its contents.

Mr. Otterson:—Put your request in shape to have it produced, and it will be produced; but it has been produced before the Master, and marked, and put in evidence.

The Witness:—The contract I speak of is a general contract, and has in it, an understanding, whenever any invention was perfected, what royalty was to be paid.

By Mr. Bowman.

Q. What relation had that to the Everitt bedstead?

A. Only in this way: That I was bound to turn over to the company anything that I got up in the factory, if desired.

Q. Did the company desire you to turn over to them anything in relation to the Everitt bedstead; if so, state what that employment was, and all about it?

A. In the summer of 1877, Mr. Cheney Kilburn came into my room. At that time work was very dull, and we got speaking about the bed, and I told him I thought I could get up a bed that would be different from anything that they had, and he told me, said he, "Go on, if you can." Said he, "We are paying a heavy royalty on this bed, and if you can get up a new one we would like to have it. And," said he, "the gentleman who does our sawing for us will saw out the necessary lumber for you."

Q. What bed are you speaking of?

A. The folding-bed.

Q. Whose folding-bed? You are speaking of a folding-bed upon which they were paying royalty; whose bed was it?

A. Mr. Everitt's bed.

By Mr. Otterson.

Q. Do you say Mr. Kilburn said it was Mr. Everitt's bed?

A. I did not say that Mr. Kilburn said so.

By Mr. Bowman.

Q. Go on and state all that was said in that conversation?

A. Mr. Kilburn said they were paying Mr. Everitt a very heavy royalty, and if they got anything that was good they would be glad to manufacture it. At that time I had not my patent reports, so as to investigate the case, and I had no copy of Everitt's patent, and Mr. Kilburn said it would be no use for me to work on that form of bed, as they had had an opinion from two lawyers in the city, naming one of them (a Mr. Harding), that the patent was all right and valid, and that I had better work in an entirely different direction. So I adopted a different class of folding-bed, at that time, and made a good many models upon them, of different styles, and they did not seem to meet his approbation, and I gave it up.

Work then commenced in the fall, and I gave up the experiment. In the winter of 1877–78, after Christmas, my work became short again, and meantime I had received my patent reports and got hold of the claim of Everitt's patent; and I also found that there had been folding-beds made, and so I made up my mind that I could get up one that would be new, so far as the features of Mr. Everitt's patent was concerned, and I so told Mr. Kilburn, and he told me to go on with the experiments, and I immediately went out into the shop and formulated my idea in very short time, and came in with it, and it struck him favorably, and then I asked him what he would give me if I succeeded, and he said, "What would you want?" Said I, "You know I am not very high in my price; if you will give me a dollar on each bed that is made, and fifty cents on each crib, I will undertake the mat-

ter." Mr. Kilburn said he would do it, and I went to work then and I prepared a model, and I exhibited it to Mr. Kilburn and Mr. Newcombe, to Mr. Henry S. Hale and Mr. Warren Hale, and it seemed to meet their approbation, and so they told me to see their attorney. This was Mr. Mason, in Washington, and Mr. Kilburn told me I had better see him and lay the matter before him, and let him decide that it was all right. So I got ready. Meantime, in these forms, I agreed that if I did not succeed it should not cost them anything; that I should do it all at my own expense.

In this first agreement I was to have two dollars and a half a day, all the time I was experimenting, but I told them that in this case, as it was a matter that they were selling I would release this agreement of two dollars and fifty cents a day, and if I did not succeed it should not cost them anything but the lumber and the use of the shop. I got ready and went down to Washington. Mr. Mason, the attorney, was not at home. Mr. Holloway, the ex-Commissioner of Patents, told me——

(Any statement of Mr. Holloway objected to by Mr. Otterson.)

Q. State anything that was said by these defendants, or by their representative in Washington; that you can state, but do not state anything else.

A. Well, I do not know as I understand exactly.

Q. Well, any conversation on the part of the parties I have specified.

A. Mr. Mason was away then, and Mr. Holloway informed me he was in New York city, and I might go back, and they would telegraph to him to meet me here in Philadelphia. That was done. They telegraphed, and then the company received a telegraph, which was sent up to me, that Mr. Mason would meet me at the Pennsylvania Railroad depot, on a certain train. I met him there, and got into the car with him, and took him down to the store on Sixth street.

Q. What store?

A. The store of the Hale & Kilburn Manufacturing Company.

Q. Go on with your narrative?

A. Mr. Kilburn and Mr. Hale—or Henry S. Hale more particularly; Warren came in once or twice—and myself got down and exhibited the models to him; and meantime I had looked up in my reports certain patents which had a bearing on the subject, and among them was one by Mr. Thistle, which I thought would have a bearing on this case. We canvassed the matter, and Mr. Mason said there was no question but my model would meet the requirements of the case, as it was entirely devoid of the claims of Mr. Everitt's patent. They then took Mr. Mason in charge, and showed him the beds, how they worked, and took him up through the factory. He had to take the train at a certain time, and when they got through I took him to Wanamaker's saloon and gave him his dinner, and took him to the depot, at my own expense, and he went on. His decision was so favorable that I was encouraged to go on, and I soon struck a still better improvement, but in the course of my investigations I found Mr. Stark's patent, and I told Mr. Kilburn that that was the patent that was at the bottom, or the first patent in this class of folding-beds. I was well satisfied of it, although in the cuts we could not tell exactly, as they only showed one drawing———

Q. Never mind that. When did you discover the Stark patent?

A. It was in January.

Q. Of what year?

A. Of the year 1878.

Q. That you discovered it?

A. I discovered it in my examinations, and I exhibited it to Mr. Kilburn. I exhibited it to Mr. Hale, and asked him why in the world they did not buy the patent in the store, and Mr. Hale said they did not think the bed business at the time they commenced it would reach the magnitude it had. He said they knew of the patent, and had talked it over with Mr. Howson, but they did not know the bed business would reach the magnitude it had since reached, and they did not think it of importance enough to buy. Then Mr. Kilburn

told me to write to the postmaster of Topeka, Kansas, and see if Mr. Stark lived there. So I wrote to the postmaster, and soon received a reply that Mr. Stark did live there. Then we changed our Bargain. I also found in the investigation, that the Maine patents too had a bearing———

Mr. Otterson: (To the Witness.) I would like to have the correspondence you have just referred to produced.

The Witness:—I could not produce it; I did not preserve them; I did not know it would be of any importance; I never expected a suit about it.

By Mr. Bowman.

Q. You say Mr. Kilburn first told you to write to the postmaster at Topeka, Kansas, to see if Mr. Stark was there?

A. Yes sir; and we changed our bargain when we found this out, and I was to go to Kansas and purchase the Stark patent.

Q. For whom?

A. For the company.

Q. What company?

A. For the Hale & Kilburn Manufacturing Company, and also the Maine patents, and was to have three per cent. royalty, and Mr. Kilburn agreed to advance all the money to make the purchases, and to take it from the royalty when it came due; and I was making preparations to go and get my models more perfect, and went out through the store, along in the fore part of February, one evening, and Warren Hale came in, and said he, "Stark is here." Well, I was taken aback some; I did not exactly understand it; and says he, "He has gone on to Washington, and will return in a few days, and he has left a copy of the patent here," and he gave it to me, the copy of the patent. Then I could see it more fully than in the official drawings, and could see the exact bearing it had on the question, and that it could be reissued. Mr. Everitt's patent was not then an infringement. Mr. Stark would have to risk the patent going through the Patent Office again, and would have to have it annulled, and would have to swear that it was not worth anything, on

account of the failure to produce the claims that should have been produced, and there is a risk in doing that, although it is often done.

Q. You said Mr. Hale told you that Mr. Stark was in the office?

A. He came back in a few days—Stark did—and Mr. Kilburn came in, and told me he was back, and he asked, I cannot tell, I think it was $20.000 for his patent. It was either $20.000, or $10.000; but I have forgotten.

Q. Who said that?

A. Mr. Kilburn.

Q. Mr. Cheney Kilburn?

A. Yes sir.

Q. He said that Stark asked $10.000, or $20.000 for his patent?

A. Yes sir; and he said, "I poohed at him, and I took him all over the factory, and I talked him to death almost, and I thought he would be glad to sell for nothing, before he got through with it;" but, at last, he came in. He came in to talk about that matter, from time to time, almost every day, and one day when he came in, he said he had closed the trade, and he had agreed to sell it for $1.000. He said, "We must manage this so that Mr. Everitt does not know of it until we get the patent re-issued." So they got the papers ready. Mr. Stark made an application for a re-issue, and, of course, with every application for a re-issue, you have to make an assignment to the parties to whom it is to run. Mr. Stark completed the assignment, and I was called into the office at evening, at the time I was to take it to Washington, and Henry S. Hale gave me the papers, and said there was the assignment and the application. I took them, and put them in my envelope that I received from Mr. Howson for carrying papers, and took them down.

Q. The assignment was by whom?

A. By Stark to The Hale & Kilburn Manufacturing Company.

Q. Direct?

A. Yes sir; and the application for the patent was to run to The Hale & Kilburn Manufacturing Company.

Q. And who gave you those papers to take down to Washington?

A. Mr. Henry S. Hale gave me the papers, when I went out, and Mr. Kilburn was there, and they were talking with me about it. I went to Washington, and arrived in Washington---but, previous to that, I asked Mr. Kilburn if there was not something in their agreement that would prevent their carrying out their arrangement with me.

Q. What agreement?

A. The agreement between Mr. Everitt and themselves, and he said, No; there was nothing in the agreement that would prevent it; and on my arrival at Washington I went into Mr. Mason's office, and Mr. Mason sat at his desk, and I went in with the papers, and he looked up, and he was writing a document, and as soon as he had completed, he turned around, and threw it to me, and said he, "Stevens, look at that!" I took it, and saw that it was an agreement between Mr. Everitt and The Hale & Kilburn Manufacturing Company, and when I came to read it over, I found this clause in it: That there was no opportunity; no chance for The Hale & Kilburn Company to be released from that contract, except by a judicial decision; that that patent was an infringement upon some prior patent, and that Mr. Everitt's patent was an infringement upon some prior patent, and when I had read it, Mr. Mason said, "You may as well give the thing up." I was greatly disappointed. I had a great deal of hopes. They were selling two or three beds a day, or somewhere in that neighborhood, and, even, two or three dollars would have been to me quite a little income. Mr. Mason had some business out of the office, and left, and I went to look over papers in the office. Finally I went out of the office, and thought I would go to the depot, and on the way to the depot I happened to think that, after all, I might go and buy the Stark patent myself, according to our previous agreement, or rather the agreement as it then stood, and

then bring a suit against The Hale & Kilburn Manufacturing Company (which would have been legitimate, if I owned the Stark patent, and got it re-issued, as I knew it was capable of re-issue), so as to make Mr. Everitt's bed an infringement of it, and get it re-issued, and bring a suit against The Hale & Kilburn Manufacturing Company, and get a judicial decision. I thought they need not have to fight it very hard, unless they had a mind to, and that it would give Mr. Everitt back his patent, and it would not hurt him, but it would give him back his patent as it was, and give me a chance to make something out of it. I did not go back, or say anything to Mr. Mason about it; I wanted to get the train home the first thing, and I started for the depot, took the train, and arrived home, and in the morning, at seven o'clock, I went to the office, and found Mr. Hale and Mr. Kilburn, and told them my proposition. Says I, "Mr. Mason has this patent and assignment there, and at ten o'clock it will be put on the records, and there will be no going back of it."

Q. That is, you mean the assignment of Stark to The Hale & Kilburn Company?

A. Yes sir. Says I, "Your way is to stop the record. Send a telegram." Immediately the telegram was written, and Mr. Henry S. Hale went out with the telegram to send it.

Q. Who wrote it?

A. Mr. Henry S. Hale wrote the telegram, and went out to send it; at least he went out with it, and said, when he came back, that he had sent it. That stopped the proceedings. Mr. Mason did not put the papers upon record, but a change was agreed upon, and a few days after, Mr. Kilburn, Mr. Stark and I went to Washington. I thought all the while that Mr. Kilburn calculated to fulfill his agreement with me.

Q. What agreement?

A. This agreement that he had made; after I found he had bought the Stark patent we fell back on the old one. Then they were not relieved from the Everitt patent. They wanted to use the footboard, with the high cornice, and then we went down again, and Mr. Kilburn immediately gave Mr.

Mason instructions to change the application so that it would not run to them, and make a new assignment, and when it was completed, when the new assignment was completed, you will find, now, in the records of the office, the old application first written in one hand-writing, and the front piece of it, the title page so to speak.

Mr. Otterson:—I object to the witness talking about the characteristics or the contents of written papers, without their production.

The Witness:—You will find enough of it torn off, and written in Mr. Mason's handwriting, to change the parties to whom it run to—to change it to Mr. Stark. Then the old assignment was taken, and put into the stove, and a new assignment made, which Mr. Mason was to hold for the Company.

Q. Who was present when the old assignment was thrown into the stove?

A. Mr. Holloway; the clerk; Mr. Mason's son—the clerk who makes their drawings was also present, and myself.

Q. Who else?

A. Mr. Stark and Mr. Kilburn. Mr. Kilburn directed Mr. Mason to do this. Mr. Stark remained over night; Mr. Kilburn and I came home that night.

Q. What next happened?

A. Let me tell the rest. I had a model with me. The reason of my going was, I had a new model, and was to have it decided by Mr. Mason whether it would meet the requirements of the case or not, whether it was all right and patentable, and as soon as I brought the model forth, Mr. Mason said it was all right, and Mr. Kilburn commenced talking against it, and immediately, as soon as Mr. Mason got the cue, he changed his talk, and I saw then that I, too, was to lose my share, that there was some other plan—at least, I was suspicious of it, and somewhat confirmed in my mind. But we came home together. I then asked them to make the agreement. I asked Mr. Kilburn; I asked Mr. Hale why they did not make this agreement in writing, and put it in writing.

By Mr. Mitchell.

Q. You mean the agreement with you?

A. Yes sir; they said they would do it; but it was put off, and, finally, it was not done, and Mr. Kilburn said my bed would not meet the requirements.

By Mr. Bowman.

Q. Then you came home with Mr. Kilburn?

A. Yes sir.

Q. What next took place in relation to the Stark patent—in connection with Mr. Everitt—when did you next hear from Mr. Stark?

A. Mr. Stark came back in a few days.

Q. Then what took place?

A. At the time the assignment was made, I have forgotten one feature of it, a due bill was given. They bought another old patent of me which they had thrown out, and were to pay me one hundred dollars for it, and Mr. Kilburn said to me, "we will do with you just as we did with Stark; we will pay you some money to go to Washington, and give you a due bill for the balance, and you can go to Mr. Roberts and draw money whenever you want it." He said that was what was done with Mr. Stark.

Q. Then when did you next see Mr. Stark?

A. A short time afterward he came back.

Q. Where did you next see him?

A. In the store of Hale, Kilburn & Co.

Q. When did you next see Mr. Mason?

A. I found out that I was not going to get anything, and I could not get this agreement that I expected, and I made up my mind to leave them, and I went back to Washington, some time afterward.

Q. Before you went to Washington, did you see Stark in and out of the defendant's store and place of business?

A. Oh! yes sir. He was not there very often, but occasionally. He was engaged in some other invention perfecting it.

Q. State whether, or not, anything was said to you by these

defendants, or either of them, cautioning you not to let Mr. Everitt know of Mr. Stark's presence in the city?

A. Mr. Kilburn always cautioned me not to let Mr. Everitt know of it.

Q. Did he state why he did not want Mr. Everitt to know it.

A. I do not remember that he did, only that he said it was better to have the thing all perfected, and have the patent all reissued, before anything was said to Mr. Everitt.

Q. Did you ever understand either of these defendants to tell Mr. Everitt that the Stark patent could be purchased for $1,000?

A. No sir; I never did. I never heard them talk with him.

Q. You say you went back to Washington?

A. Yes sir.

Q. What did you discover on your return to Washington?

A. Why, I told Mr. Holloway.

(Objected to by Mr. Otterson.)

Q. Who was he?

A. He was Mr. Mason's partner, and one of the firm.

Q. And they were employed by the defendant's in this matter, were they?

A. Yes sir.

(Any conversation between Mr. Holloway and the witness; objected to by Mr. Otterson.)

Q. State your interview with Mr. Holloway?

A. I told him that I was to lose my share, anyhow.

Q. How were you to lose it?

A. That they refused to sign the agreement with me, and undoubtedly had adopted another plan. Mr. Mason told me I had better go back, and he would write them a letter. I shall have to bring in another trade in this thing. There were two things. I took a model of the bed, and the attachment seal for the chair, and asked Mr. Kilburn there, in the presence of Mr. Holloway and Mr. Mason, if he wanted those matters; if so he could have them. If he wanted them applied for in the name of the company, and he said, no; he did not want them. And I was trying to get an agreement from them. They had agreed to make an agreement which would stipulate

the royalties on the chair, that I should receive half, in spite of any other patent which they bought, and it was agreed that this patent was to be put, as the other patents were, one half in my name. But I found, when I came to look at the records, that they were not so put; that it was not in my name, and that I was to lose, if they carried out their plan, the royalty on the chair; that they had got the Lee patent, as it was called, all in their own name.

Q. Well, you were stating about your interview with Mason, after you returned to Washington the next time?

A. He told me to go back, and see them. I left, not intending to return; but I did return, and then we fixed up the agreement on the chair.

Q. Did you come here to Philadelphia?

A. Yes sir; then I thought I would wait, and see their intentions about the bed, whether they would really give me my share, or not. I started out, and went to travelling for them, selling goods, to have something to do, and a good many failed. It was when the bankrupt act was taking place, and a good many of our customers failed, and I lost my share in it. I lost my commissions. I lost a good many goods, and then I went on a trip to Boston, and they had preceded me in the trip, and I could not sell any goods. They had been to almost every customer between here and Boston. Then I took another trip to Washington, and it was almost the case there; and the man in charge of the Baltimore store was very much offended at my selling, as he was going to sell in Washington himself; and I came back and made up my mind to quit; and I went to Boston.

Q. How many times did Mr. Stark accompany Mr. Kilburn to Washington?

A. Only once, that I know of.

Q. Do you know of his having gone to Washington, with either of the other defendants?

A. No sir; he did not go to Washington with either of them, I think. He went down first, as he was passing along on his own business, as he informed me. He left a copy of

the patent and inventions, and a notification that they were infringing, and said he would see them when he came back, as I was informed.

Q. Who left that notice?

A. Mr. Stark; he left the copy of the patent.

Q. And what else?

A. A note that he would stop on his return to Philadelphia and would see them.

Q. With whom did he leave that word?

A. With Mr. Warren Hale at the store.

Q. When was this?

A. I think that was about the ninth day of February, 1878.

Q. Was that after he had been to Washington with Mr. Kilburn and yourself, and fixed up the assignment?

A. Oh, no! That was before; that was when he first appeared.

Q. Where did he stop?

A. At a hotel, I have forgotten the name, down on Fourth Street.

Q. The Merchant's Hotel?

A. The Merchant's Hotel; yes sir.

Q. Do you know anything about a letter sent by Mason, as the attorney of Stark, to the Defendants, on April 10, 1878?

A. It was arranged that Mr. Mason should notify the Hale and Kilburn Mfg. Co. that they were infringing Mr. Stark's patent.

Q. It was arranged by whom?

A. By Mr. Kilburn and Mr. Mason; and when the latter came, Mr. Kilburn came in where I was to work, and he says, "Why, what do you think? He has charged $100 for that notification."

Q. Do you remember when the letter came; on what day?

A. I could not tell now; it was some time.

Q. Mr. Kilburn said that Mason had charged $100 for writing the letter or notification!

A. Yes, sir; the notice of the infringement I do not know but he said he wrote three copies of it; one directed to a

firm in New York; one directed to some firm in Boston, and I think one directed to themselves.

Q. What was it?

A. A notification that they were infringing.

Q. Infringing what?

A. The Stark patent.

Q. What was it that was understood between the defendants and Mason that the object of that note should be?

A. Well, the object then was to get Mr. Everitt to reduce his royalty. That was the plan that I saw they had adopted. They had seen they could throw me overboard easier than they could him, and sooner than pay me the royalty they would let the contract stand with Everitt and get his royalty reduced, and use it as a means for reducing his royalty.

Q. Mason, then, appeared as counsel for Stark in the notice of the infringement?

A. Yes sir; Mr. Stark did not know anything about this matter, I do not think, because he went on and simply signed the papers, as they wanted him to, and changed them, but I do not think he knew anything about the matter. He never said anything about it to me. I think he acted in perfect good faith, in changing the writings.

Q. Do you know anything about the suit which was brought in the United States Circuit Court, in Stark's name, against the defendants?

A. I knew a suit was to be brought, but I did not know anything about when it was to be done. They threw me out of the council then.

Q. How did you know that there was a suit to be brought?

A. It was arranged, then, at that time, instead of letting me go on, as it was agreed upon, and let me bring the suit myself, they agreed they would not trust me, I suppose, and they would let Mr. Mason bring it in Mr. Stark's name.

Q. It was arranged by whom that this suit should be brought against them?

A. By Mr. Kilburn, at that time.

Q. With whom did he make the arrangement that the suit should be brought?

A. With Mr. Mason.

Q. And what was the object of that suit?

A. It was to scare Mr. Everitt a little, and get him to reduce his royalty.

Q. And Mr. Mason was to appear as Stark's attorney?

A. Yes sir.

Q. Who employed Mason to do this work?

A. Mr. Kilburn.

Q. Do you know about a complaint being made by Mr. Kilburn of Mr. Mason's charges for this work, of $100?

A. No complaint, only he spoke of it in his kind of a bluff way. He came in there, and, says he, "he has charged us $100 for writing those letters."

Q. Do you know what Mr. Mason's reply to that was?

A. Oh! Mr. Mason did not know he said anything of the kind. He did not say that to Mr. Mason. Mr. Mason was not there. That was a remark he made to me, in the shop where I was at work.

Q. What is your business?

A. Well, I have been at work at inventions, for awhile, for quite a number of years, now.

Q. What are you—a practical worker; are you a mechanic?

A. No sir; I should not hardly include myself in that category; that is, not as a skilled workman.

Q. Do you know anything about patents?

A. I do; yes sir; some.

Q. Have you made patents of furniture a study?

A. I have; yes sir; some.

Q. For how many years?

A. Four years.

Q. Have you given special attention to patents in relation to fo'ding-beds?

A. I think, for the last three years, I have.

Q. Are you familiar with the Everitt patent, and improvements on his bedstead?

A. I am; yes sir,

Q. Can you state the different features about the Everitt bed, and the finish of them?

A. One of the important features of the Everitt bed is this claim for the extended brackets. At the time that this contract was made between Mr. Everitt and the Hale & Kilburn Manufacturing Company, there was no folding-bed made where there was any place to put the bed-clothes, and stow them away in the bed, and the value of Mr. Everitt's patent grew out of this fact, that in the bed, by these extended brackets, he provided a place for the bed-clothes; and, oftentimes, in a patent, a very little thing makes it of great value; small improvements. The smallest thing in the sewing machine, the eye of the needle, makes the sewing machine valuable, and so it was in the folding-bed, and in almost all cases when you get the first little improvement, that makes the thing practical, and it leads to others.

Mr. Otterson:—Won't you stop this lecturing, and confine yourself to facts? I do not want a lecture on the subject of patents, and have not time to stay and listen to it.

By Mr. Bowman.

Q. I am asking about the leading features of the Everitt bedstead, and the finish of the Everitt bedstead; you started out by stating that the extended brackets were the leading features.

A. Those were the leading features.

Q. Was there any other leading feature about the Everitt bedstead?

A. This extended bracket also extended the height of the cornice so as to give the bed good proportion, and so that it would look well. It had an advantage in that respect over the Stark patent. In fact, the Stark was never practicable, and of no value; never was made, and never will be made, for the market.

Q. What do you know about the finish of the Everitt bedstead, as to the mirrors?

A. I know this—that the bed is made either with or without a mirror. There is a place left in the front of the bed which may be supplied with a mirror if a person wants that

style of finish, or it may be for a panel finish which will also make it a perfect bed; but the bed is not complete without either one or the other, any more than a looking-glass and frame, with a place for the glass, would be complete without the glass. It would not be a complete looking-glass.

Q. Then the looking-glass, or panel, or mirror, as the case may be, is a part of the bed?

A. It is part of the bed. So, also, a bed is not a bedstead complete without it has a bottom to it. No bed would be complete without it, and when a bottom is selected, it remains for the purchaser of the bedstead to decide which style of bottom he will have to make the bed complete, to make it a complete bedstead.

Q. Do you know anything about the ebony and gold finish; is that kind of finish a part of the bedstead also?

A. I should say so; the same as if I bought a chair with ebony and gold finish; I should expect to pay more for it.

Q. All these things have their influence in regulating the price?

A. Yes sir; certainly.

Q. Did I understand you to say, that before you saw Mr. Stark in Philadelphia, Mr. Kilburn got you to write out to Topeka, Kansas, to see whether he was there?

A. Yes sir; to see whether he still lived there.

Q. And the answer came back that he did?

A. Yes sir; from the postmaster. He did not want to write to him for fear it would create suspicion to have a letter go from a Company that made a folding-bed, so it was decided to write that way.

Q. Did you afterward write to Mr. Stark, or anybody about him, to Kansas?

A. I did not. The arrangement was that I was to go and see Mr. Stark, but Mr. Stark appeared before I was ready to go.

Q. Then the next thing you knew about Stark was his appearance here, in Philadelphia, at the defendants' store?

A. Yes sir.

Q. Did Mr. Hale ever see you after you left Philadelphia,

in reference to the improvements you had made in connection with the Everitt bedstead?

A. Well, I do not know what you would call it. He saw me at the American Institute Fair in New York, and got out papers to arrest me, under a charge of obtaining money under false pretences.

Q. I asked you whether he ever saw you in reference to the improvements which you had made on the Everitt bedstead; did he write you a letter concerning them?

A. Yes sir; I had forgotten that. That was at Boston.

Q. I am asking you about that?

A. I was stopping at Boston, at a hotel there, the Milliken House. One Sunday morning I came from my room, and right opposite to where I came into the room, on a lounge, sat Mr. Hale. He got up, and "why," said he, "I am surprised to see you." I told him I was equally surprised to see him, and we sat down on the lounge and talked over matters awhile, and finally, said he, "I have been thinking over the matter of your chair and patent books," and says he, "I have thought of the offer you made, before you went away, and on my own responsibility, without consulting the Company, I have concluded to accept your proposition." I had offered to sell them the whole for $200.

Q. The whole of what?

A. My right to the Chariot Chair, upon which they were paying me $200 or $300 a year royalty, and my patent books, I think fifty volumes in number. I could not carry them about the country, as I was all broken up, and so I accepted it. I made up my mind that it was no use to hang on there any longer, for they had thrown me overboard, as I could see plainly, and I went to the desk to make the agreement. Then, he said, after we went there, "How about the bed models—hadn't you better throw those in?" I had written the agreement for the others first, and I told him, "You know what our agreement was in relation to them; that I was to have a royalty if you ever used them." He said that they never should use it; that it was of no value to them, as they had previously stated, before, and that if they

ever did use it I should have the royalty; but he said they never would. So we drew up another agreement, a supplementary agreement for the bed, making the consideration one dollar.

Q. You mean the improvements you have made on the Everitt bed?

A. Yes sir; and I gave them an order on the place where I had boarded. I had left them here. I gave a letter to the lady who kept the boarding house, and he went and procured the models, and this, (letter produced) is the letter I received after he got home.

Q. Is that the letter you received from Mr. Hale, in reply?

A. Yes sir.

Q. Who is the "Mr. E." referred to in that letter?

A. Mr. Everitt.

(The letter offered in evidence by Mr. Bowman and marked "No. 65, Jan'y 12, 1880, R. A. W.")

By Mr. Otterson.

Q. Whose memorandum is this in pencil (the letter shown witness)—is that in Mr. Hale's hand-writing?

A. That is part in my hand-writing, Mrs. Kunzman, 606, Spruce St., is in my hand writing, I think, but the other "H. S. Hale got Steven's models," I should think is not in my hand-writing.

Mr. Bowman:—I only offer in evidence the letter written in ink; the pencil marks have nothing to do with it.

(To the witness.) Have you anything further to say in that connection?

A. I went to Hale, Kilburn & Co.'s store, in Boston, the next morning. Mr. Stebbins had charge of the store. He said to me, "What was Harry on for?" I said, "He told me he came on to see you about business of importance," said he, "He did not have to come on to see me." Said I, "He did not come on to see me, because he did not know I was here." Said he, "Yes he did, because I wrote him last week that you were stopping at the Milliken House." Then I thought they were going to get the beds away from me;

that this was a plot. Then I came on to New York, and I had agreed to sign over this patent which was bringing me a royalty, and these books, for $200. $98.50 being an account that I owed them, that I came out in debt for traveling on the last trip,—and I came on to New York, and I made up my mind.

Q. Never mind what you made up your mind to: state what you did?

A. As you see in the letter, he said he would send me the money. I went to the New York store, and the money was not there. I telegraphed him, and he ordered them to pay the money. Then I came right on to Philadelphia. There was nothing said about it, until after waiting three or four days, and finally Mr. Hale came to me and said he would like me to go to Howson's and sign the application for the patents on the beds, Said I, "Mr. Hale, suppose I go down —I want to go down, and see Mr. Kilburn." Meantime, I had seen that steps had been taken to make the bed. I went up to where Mr. Kilburn was to work, in the third story, and told him the circumstances of Harry's coming there, and said, "I am ready, and I will pay you the money back." Said I, "This was obtained from me, this agreement, through misrepresentation.—I am willing to pay you the whole back."

Q. What money were you going to pay back?

A. The money that they had paid to me; but, said I, "I cannot pay you the amount of the account, of course."

Q. What money was this?

A. The money they had paid me for the patent and for the books; the consideration of the bedstead matter was one dollar, and the $199 was for the Chair patent and the patent reports of fifty volumes. Says I, "I can pay it all back, and throw the whole of it off, if you desire;" and Mr. Kilburn says, "You go down and sign the papers; I will make it all right." Said I, "Mr. Kilburn, you know how you promised to sign those papers for me, time and again, last winter, and deceived me, and this is another step in that direction." Just then, Mr. Harry Hale came up the elevator, and said he, "I won't take the money. We want those papers signed."

I said to him, right straight, "I will never sign them." He went back, and, said to Mr. Kilburn, "You go down and make it all right." Says he, "It has put Harry in a bad position here, this matter has, and do not you get mad, both of you; but fix it up." So I said I would come in in the afternoon and have a talk with Harry. I came in, and I told him, "I have only one condition; If you will give me time, I can pay you the amount of the account, although you paid me by your receipt for the account." He said he knew what he could do. He had counsel, and he would give me until next Monday noon, to sign those papers. I made up my mind that it was no use for me to stay there any longer. I thought the matter all over, and I made up my mind to leave the place, and did so. Monday morning I did so; but first executed the assignment of the chair, and left my patent reports according to agreement, and enclosed the due-bill which was owing to me, here, for a little bit of work they did for me on Saturday, and told them to take out the dollar which was the consideration for the bed, and that I should not assign the bed over.

Q. And that was the end of your connection with them, was it?

A. Yes sir; that was the end. I left the city.

By Mr. Otterson.

Q. You wrote to them to that effect?

A. Yes sir; and enclosed the assignment of the chair, and I have the assignments, here, on record in the patent office, as I executed and sent them.

Q. When you came on from Boston, did you notice whether the defendants had made any arrangements to manufacture the the bedsteads according to your improvements?

A. Yes sir; I was informed they had made arrangements to make them.

(Objected to by Mr. Otterson.)

Q. Were you informed by any one in connection with the defendants' employment?

A. Yes sir.

Q. State by whom?

A. It was the man who packs the beds.

Q. Is he in the defendants' employ?

A. Yes sir; and they are now making the beds substantially according to my plan.

Q. State whether, or not. Mr. Kilburn sent you to No. 230 South Second Street, to see and examine one of the Stark beds?

(Objected to by Mr. Otterson as leading.)

A. Yes sir; I went there. He sent me to see if Mr. Hoover had the springs in, and the weights on it. He said he would not know me, and I could go there and look it up.

Q. When was this?

A. I cannot tell exactly; it was sometime in 1877, I think.

Q. Was it before they got the assignment from Stark?

(Objected to by Mr. Otterson.)

A. Yes sir; it was some time before.

Q. You are sure of that, are you?

A. Yes sir; I did not know the bed under the name of the Stark improvements; but it was a bed that was there.

Q. You, at that time, did not know that it was the Stark patent?

A. No sir: I did not know anything about the Stark bed.

Q. But Mr. Kilburn knew at that time that the stark bed was at that place?

(Objected to by Mr. Otterson.)

A. I should think Mr. Kilburn knew of the bed at that time of Stark. He knew there was a bed there, and it was the Stark bed, except they had put the weights. No; it was not really the Stark bed, because they had put the weights on. Mr. Kilburn said he had to make a bed of some kind, and he wanted to see if this had the weights, or connecting rods.

Q. Do you know who called Mr. Kilburn's attention to it?

A. Yes sir; I saw it in the store, and talked to Mr. Kilburn about it, and he wanted me to go and see if it had the weights. I told him I thought it had, from the operation of it, and he said he wanted me to see it because he wanted to ascertain what he was selling.

Adjourned until Friday next, January 16, 1880, at 3 P. M.

The meeting arranged for Friday, January 16th, 1880, was on account of the inability of Mr. Otterson to attend, continued until Monday, January 19, 1880, at 3 p. m.

Philadelphia, Monday, January 19, 1880.

Parties met at the office of the Master.

Present:—The Master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Anderson, representing Mr. Otterson, and Mr. Stevens, the witness under examination.

Mr. Anderson:—I have been requested by Mr. Otterson to attend this meeting this afternoon, and state that professional business has called him to Washington, and that he is unable to be here; but will try to fulfil any appointment which may be made for him, say for Wednesday or Thursday of this week.

Mr. Bowman:—I desire to state, and I wish it entered upon the minutes, that I have been compelled to keep Mr. Stevens, the witness under examination, here this entire week. I desired that his examination should be finished last week; I now request the Master to make an order for the examination of the witness before Wednesday night, because his business engagements peremptorily require him to be in Boston on Thursday morning, or lose his situation.

The Master:—I direct that the next meeting in this cause shall be held on Wednesday next, at 12, noon, provided that that hour will not conflict with the professional engagements of the counsel. If the hour of noon does conflict with such professional engagements, then I direct that the meeting shall be held at 3 p. m.

Mr. Bowman:—I also request that in case Mr. Otterson is not present, this examination shall proceed, and that Mr. Otterson shall lose his right to cross-examine the witness now here.

The Master:—It shall go on whether Mr. Otterson is present or not.

Philadelphia, Wednesday, January 21, 1880.

Parties met at the office of the Master.

Present :—the Master, Mr. Everitt, Mr. Stevens, the witness under examination, Mr. Otterson, Mr. Cheney Kilburn, Mr. H. S. Hale.

On account of the professional engagements of Mr. Mitchell in the Supreme Court, and of Mr. Bowman in Common Pleas, No. 2, the meeting adjourned until 3 p. m.

Philadelphia, Wednesday, January 21, 1880.

Parties met at the office of the Master.

Present :—The Master, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale and the witness, Mr. Stevens.

Asher B. Stevens, cross-examined.

Mr. Otterson :—I was mistaken in saying that the paper which was called for at the last meeting, being an agreement between the witness and the defendants, had been produced and marked in this case. It is now produced.

(Paper produced by Mr. Otterson and handed Mr. Mitchell.)

Mr. Otterson: (To Mr. Mitchell). Do you intend to offer this paper in evidence?

Mr. Mitchell :—No sir; I do not desire to offer it now.

Mr. Otterson :—Then, although it is a little irregular, I will offer it myself.

(Paper marked "No. 66, January 21, 1880, R. A. W.")

By Mr. Otterson.

Q. Is this paper you refer to in your examination in chief an agreement between yourself and the defendants?

A. It is.

Q. There is mention in this paper of inventions only, without specifying anything in particular except the chairs?

A. Yes sir.

Q. Is this the paper which between you was understood as

covering the improvements which you proposed to make upon the folding-bed?

A. That paper covers all the improvements that I should make, that they should desire to have made.

Q. Upon a folding-bed?

A. Upon a chair or anything else.

Q. But it included the folding-bed improvements as well as all others?

A. Anything that I could do that was desired.

Q. Do you consider your memory perfectly reliable in all respects.

A. I think it is very reliable. Yes sir.

Q. Do you say very reliable, or pretty reliable?

A. I think it is quite reliable. Yes sir.

Q. The notes of the examiner report you as saying that Mr. Kilburn told you to write to the postmaster at Topeka, Kansas. Are you sure your recollection is correct on that subject?

A. I asked Mr. Kilburn if he had not better write to the postmaster at Topeka, Kansas, and find out whether Mr. Stark lived there, and he replied, no, it would not do for them, and that I had better do it, that it would not do for a letter to come from the factory, for it would excite his suspscion if a letter came from a folding-bed factory.

Q. Then it was your proposition, and not his?

A. In the first place, yes sir.

Q. Do you say that you told him you had written to Topeka, or did the matter drop there and then the writing come?

A. It dropped there until I got the reply. I think—I don't know—I may have told him I had written; but after I got the reply I told him, Stark did live there.

Q. You are quite sure of that, are you?

A. Yes sir.

Q. Your recollection is very good on that subject?

A. It is; yes sir.

Q. I put it to you so pointedly because the recollection of

other parties is quite different, and I want to know whether you are very sure of the statement you are making?

A. I am very sure of it. I think I remember the transaction very accurately.

Q. Did you have any conversation with Mr. Stark at all about what brought him here?

A. No sir.

Q. Do you mean to be understood as saying that you took the assignment from Stark to them to Washington with you?

A. Yes sir.

Q. You are clear in your recollection on that subject?

A. Yes sir. When Mr. Stark made the trade he delivered it to the company.

Q. You were not present, I suppose, when it was done?

A. I was not present; but I was told so.

Q. By whom were you told so?

A. By Mr. Kilburn.

Q. Well, go on and state it?

A. That he delivered the patent papers which he had sent on to Washington to Mr. Mason, to have an application made out. That was somewhere about the 19th of February, I think, and the papers came back the 23d. The application for the patent, and the assignment came back, prepared by Mr. Mason for signatures, and then, when they were executed, which was on the evening, I think, or the day of the 27th of February, on that evening I went down to Washington with them.

Q. Do you not know the fact to be that the paper you refer to was prepared in Washington by Mr. Mason in the presence of Mr. Kilburn and Mr. Stark, and was executed there in Mr. Mason's office immediately upon its preparation?

A. The second assignment was; yes sir.

Q. Do you not know that that first paper you speak of and call an assignment, was drawn in Mr. Kilburn's office by Mr. Henry S. Hale, and there executed by Mr. Stark?

A. No sir; the application was prepared and sent back for his signature, and the assignment upon it. It has to be necessarily so. They could not make an application without.

Q. Wait. I am not going to examine you about the law, or the habit of the patent offices. I only ask you about facts, and I ask you whether you do not know that the original paper, called an assignment of the Stark patent, was drawn in Mr. Kilburn's office, in Sixth street, by Mr. Harry Hale, was signed there by Stark, and was never seen by Mr. Mason until afterward, when it was presented to him by Mr. Kilburn?

A. When I went into Mr. Mason's office——

Q. Won't you answer my question, please?

A. I carried the original assignment and the applications for the patent into Mr. Mason's office with me.

Q. And you were alone at that time?

A. I was alone; yes sir. I see that I am made to say that when I went into Mr. Mason's office that morning Mr. Mason was writing a document. It should be reading a document, which he handed to me after he got through, which document was the agreement between Mr. Everitt and the Hale, Kilburn Manufacturing Company.

Q. You say that Mr. Harry Hale handed you these papers. Do you mean this application and the assignment?

A. Yes sir.

Q. Did you read them through?

A. I did not read them through. I had not time. I was just going to my tea, preparatory to take the train at eleven o'clock, at the Baltimore and Ohio depot.

Q. Did you read them?

A. I did.

Q. When and where did you read them?

A. After I got to Mr. Mason's office; we looked them over. I think it was while I was waiting. Mr. Mason had something to do there, and before I gave them to him I looked them over to see whether they were all correct.

Q. How long was it after Warren Hale had told you that Mr. Stark had been in the store before you took this trip to Washington?

A. I had taken one trip; you mean this second trip?

Q. I mean this trip to Washington in which you carried the papers just spoken of?

A. I should think, perhaps, it was a week or ten days; I can't tell exactly.

Q. You said that Mr. Kilburn requested you not to let Mr. Everitt know that Mr. Stark was in the city. Do you not know that Mr. Everitt was informed, on the very day of Mr. Stark's arrival here, that Mr. Stark was in the city; on the very day of his first appearance in the office?

A. I think I said that Mr. Kilburn requested me not to let him know of the proceedings; not that he was in the city. I think, if you will look at the evidence, you will find that to be the case.

Q. The question is asked, page 435, "State whether anything was said to you by these defendants, or either of them, cautioning you not to let Mr. Everitt know of Mr. Stark's presence in the city." And your answer was, "Mr. Kilburn always cautioned me not to let Mr. Everitt know of it." Do you not know that Mr. Warren Hale, on the day of Mr. Stark's first calling at the office of the defendant after his arrival in the city, told Mr. Everitt of the fact of Mr. Stark being in the city?

A. I did not know it until recently.

Q. How did you learn it recently?

A. Mr. Everitt informed me that he told him.

Q. What do you mean by recently"—since you were examined-in-chief here?

A. No sir; it was sometime within—I don't know, but it was at the time somebody was to go and look at the records of the office.

Q. Was it before you read the notes of testimony in this case?

A. I could not tell you; it was before I read some of the notes.

Q. I take that for granted, because some of the notes were not in readable condition until your testimony was given?

A. I think Mr. Everitt told me that sometime ago.

Q. Was it before or after you read the notes of evidence in this case?

A. Before; he first told me before.

Q. How?

A. He told me before; yes sir.

Q. Do you still say that Mr. Kilburn cautioned you not to let Mr. Everitt know of Mr. Stark's presence in the city?

A. I knew that he told me not to let him know where Mr. Stark boarded, and not to let him know of the proceedings; that he did not want him to know; but I think Mr. Kilburn told me that he had told Mr. Everitt that Stark was here.

Q. You say that Mr. Kilburn told you that he had told Mr. Everitt that Stark was here?

A. Yes sir; I am very sure that he told me that he had told Mr. Everitt Stark was here, and told him what he had asked for the patent.

Q. Do you still think that Mr. Kilburn cautioned you not to tell Mr. Everitt that Stark was here?

A. I shall have to correct my evidence on that question.

Q. That is your right to do, my dear sir.

A. I think that Mr. Kilburn told me that he told Everitt Stark was here, but he told me not to let him know where he roomed on Fourth street, and not to expose the proceedings or say anything about it; to be careful; and I avoided talking with Mr. Everitt entirely.

Q. Do not you think that inventors sometimes, for their own purposes, like to be kept perfectly private as to their habitations?

(Objected to by Mr. Bowman.)

A. Yes sir.

Q. You have found it desirable in your own case, have you not, to keep your place of residence unknown?

A. Yes sir.

Q. And Mr. Kilburn had a charge of that kind over your secret, had he not?

A. Yes sir.

Q. He knew where you were, and he did not want other people to know?

A. He did not want other people to know.

Q. And you did not want other people to know?

A. And I did not want other people to know.

Q. So that it was not a remarkable thing for him to caution you not to let Mr. Everitt know where Stark was?

A. No sir; not a remarkable thing.

Q. In the application for the re-issue of the Stark patent, you insisted upon saying, "You would find enough of it torn off and written in Mr. Mason's handwriting to change the parties to whom it ran to, to change it to Mr. Stark." Why did you make that statement?

A. I looked at the files of the office to corroborate an affidavit that I made before I left the city, here.

Q. When did you do that?

A. When did I look at the files of the office?

Q. Yes sir?

A. It was three or four months ago; I cannot tell you exactly.

Q. Do you mean to say when you left the city, after you refused to sign the papers that Henry S. Hale required you to sign?

A. Yes sir; I do.

Q. Now, you are sure that your recollection is correct?

A. Yes sir.

Q. Are you as sure of that as you are of anything that you have testified to in this case, either in direct examination or in cross-examination?

A. Of what?

Q. As to this statement as to the making of this paper in the files in Washington?

A. As sure as I am of anything; that the papers for the application for the re-issue was changed there, and so is shown in the office at Washington.

Q. Changed in the manner and for the purposes set forth in your testimony-in-chief, and in my question?

A. Yes sir.

Q. And you are as sure of that as you are of anything you have testified to in this case?

A. I am as sure of that as of anything.

Q. You have no fear that your memory would mislead you in anything of that kind?

A. No sir; it could not mislead me; the whole circumstances made too strong an impression on my mind. It was the breaking up of my business and my hopes, and it made a great impression on my memory.

Q. In the examination-in-chief, you are reported as saying that Mr. Harry Hale told you "he had counsel, and he would give you until Monday noon to sign those papers;" referring to the papers about his chair, and the improvements that he had been making on the folding-bed?

A. Yes sir.

Q. I produce and show you a letter dated August 9th, 1878, (letter shown witness) is that your handwriting?

A. Yes sir.

Q. Did you send that letter to Henry S. Hale?

A. I did.

Q. Is it not suggested by you, there and then, that Mr. Hale should give you until Monday to make those settlements?

A. Yes sir.

Q. Then it was not Mr. Henry S. Hale's proposition, was it?

A. I did not say it was his proposition. I went to the office; I wanted to try and have the matter settled peaceably, and he said he had counsel, and it was arranged that I should have until Monday noon. I told him if I concluded to sign the papers I would do it by Monday noon, and that is the way I left it. I did not want to leave; I was trying to get money to pay the account. I had not money enough to pay the whole.

(The letter offered in evidence by Mr. Otterson, and marked "No. 67, Jan'y 21st, 1880, R. A. W.")

Q. What affidavit was that you wanted to verify which induced you, three or four months ago, to look at the files of

the patent office in Washington, and examine this application for the re-issue of the Stark patent?

A. It was an affidavit that I made after this meeting with Harry Hale that day in the office.

Q. What day?

A. That day; that afternoon; that night.

Q. You said, a few minutes ago, that that affidavit was made three or four months ago?

A. No; you misunderstood me. I went to Washington three or four months ago to look at the affidavit. This testimony put me in the way of swearing to it falsely, as I had sworn to this affidavit before I left, and I wanted to verify it.

Q. Then it was near eighteen months ago that the affidavit was made?

A. Yes sir; I should judge so. Well, it was that day, that Saturday afternoon, before I left the city.

By Mr. Bowman.

Q. Could you tell if you saw the affidavit?

A. I could; yes sir.

(Affidavit shown witness by Mr. Bowman.)

A. Yes sir; this is the affidavit. When I left the city I did not expect to come back, and it was so understood.

By Mr. Otterson.

Q. Understood by whom?

A. By Mr. Everitt's attorneys.

Q. And your leaving the city was without the knowledge of the Hale & Kilburn Company?

A. It was; yes sir—no sir! that is my mistake. I wrote them a letter the day I left inclosing the assignment of the chair, which was to perfect their title to it, and a due-bill to pay the account I had with them, and stating I was leaving the city and did not intend to return.

Q. But that would not reach them then, until after you had left?

A. Quite likely. I drppoed it in a lamp-post.

Q. And, in addition to your leaving, they did not know anything of your purpose to go?

A. No sir; they did not.

Q. But Mr. Everitt did know—and his attorneys?

A. Yes sir; I suppose they did. I think I told them. I am very sure I did.

Q. Did Mr. Kilburn know that the bed that was at Mr. Hoover's place of business was a Stark chair?

A. I do not think he did.

Q. I understood you to say so before?

A. I say the notes have it so reported. It was my mistake. I thought that Mr. Bowman was going to take me up, so that I could correct it. If I said that, I said what I did not mean.

Q. Were you present, and where, at the time that it was agreed upon or arranged that the letter should be written, which was afterward written and dated April 10th, 1878?

A. All I know—you mean the letter of notification?

Q. Yes sir.

A. All I know about that is that Mr. Kilburn and I came in the train together from Baltimore. On the return he said that Mr. Stark would write a letter of notification.

Q. You mean Mr. Mason, I suppose?

A. Mr. Mason, I mean; yes sir.

Q. You are sure of that?

A. I am sure he told me, and I think it was at that time. We were talking the matter over. He told me, I think, when we were going up. They had talked a little low; Mr. Stark, Mr. Mason and Mr. Kilburn were in the other end of the office, and all I knew about those titles and that there was a suit to be brought was what he told me afterward. Really, I do not know just when I was told; but I know I knew it. I knew it was to be done.

Q. At that time you were upon confidential terms with Mr. Kilburn, were you?

A. Yes sir; I was. That is, I was in this respect, at least—

Q. And your relations were very friendly?

A. Yes sir; very friendly; or, at least, I thought so.

Q. And when you found out that they were not going to make your bed, then you went to Mr. Everitt, and told all that you had heard, and made an affidavit of it?

A. Yes sir—let me correct that. It was not when I found

out that they were not going to make my bed, for I did not know that, and never found it out. But it was when I found that the agreement was not to be fulfilled with me; that they would not give me the agreement in writing; and that by the assignment of my half interest in the chair to them, I no longer had any protection in that.

Q. And then you got angry?

A. Yes sir; I did not get angry at that time; yes! I did get angry once, and did go down and have a talk with Mr. Kilburn.

Q. I do not mean your blowing out, but when you got angry?

A. I got angry when Harry wanted me to sign those papers, and threatened me, indirectly, in the way he did.

Q. And in consequence of that you went and told Mr. Everitt and his attorneys all that had transpired, and all that you could think of, between you and them with reference to Mr. Everitt's matters, and the Company?

A. I made that affidavit. I tried very hard to have matters carried out as we had agreed upon. I saw that it would be bad for me and for them, if they were not.

Q. If what were not?

A. If the agreement was not carried out.

Q. Between them and you?

A. Yes sir.

Q. And when you found that they had other purposes than the carrying out of that agreement, and you became angry in consequence of it, then you went to Mr. Everitt and to Mr. Everitt's attorneys, and reported all that had transpired between the defendants and you, while you were enjoying their confidence?

A. I think I did; that is, substantially.

Q. You meant to do that?

A. Yes sir.

Q. You meant to do the defendants all the harm you could, at that time?

A. I thought I could not stand it. I knew they would have

to adopt, in order to succeed, my bed, and I made up my mind that I would not stand and see them enjoying the benefits of my efforts if I could help it.

Q. And you meant to do them all the harm you could, in that direction?

A. I meant to foil them; yes sir; to foil them in the effort.

Q. And you have been acting under that spirit and feeling, ever since?

A. Not at all. I never intended to come back, and should not have come back here, had I not been informed that a warrant was out for my arrest, and that I was placed in a position where I was liable to be prosecuted for perjury, unless my statements were substantiated. But for that I should not have troubled them.

Q. Where did you hear that a warrant was out for your arrest?

A. Mr. Morrill told Mr. Waite.

Q. Who is Mr. Waite?

A. Well, Waite is a member of the firm of Thompson, Perley & Waite.

Q. Who had issued the order and warrant for your arrest for perjury?

A. No sir—for my arrest, they said, for obtaining money on false pretence—and that was in reference to these assignments.

Q. But who had done that?

A. That Mr. Hale did.

Q. When were you informed of this?

A. Last October, I think it was—yes sir, last October. The day after the effort was made.

Q. Where was the effort made?

A. In New York city.

Q. By whom?

A. By Mr. Hale—so they said.

Q. And that is what brought you back to Philadelphia, now, in January, is it?

A. That was one thing. I wrote to Mr. Snow. I heard

he had left their establishment, and I wrote to him to know the grounds, and to ask him if he knew the grounds on which I was to be arrested, and he replied to me—

Q. Never mind about this correspondence, unless you can produce it.

A. I think it is in my valise.

Mr. Bowman:—If Mr. Otterson calls out these things, I insist upon all the information being upon record. The witness states that he heard that the defendants were going to have him arrested, and that he came on here to vindicate himself, if there was any warrant issued, and to substantiate what is in that affidavit which he swore to.

Mt. Otterson:—The witness has not sworn to any such thing, if I understand his testimony; and that is all I have to say about that——

(To the witness.) You say you first heard of this in October last?

A. Yes sir.

Q. Then you did not come, in October, to vindicate yourself—but came in January.

A. I did not come in October; no sir.

Q. When you did come in January, did you go to the defendants' office to let them know you were here and ready to answer any complaints they had against you?

A. I did not.

Q. Have you been to the defendants' place of business, since you arrived in the city?

A. I have been by there.

Q. Have you been there?

A. No sir; I have not. I did not go there because I thought it might be construed that I was figuring with them. I did not know what might be. I thought it was best to keep away. I knew I had this to meet, and my friends advised me it would be better to meet it than have it hanging over me.

Q. Did you report, at all to them, directry or indirectly, that you were in the city, since you have been here?

A. No sir; not that I am aware of.

Q. Had they any means of knowing that you were in the city, prior to the time when you came into this office to undergo this examination in chief?

A. Not that I am aware of.

Q. Then, will you explain how you are getting vindication by the course you took after you arrived here?

A. I said I went to Washington, to verify that affidavit.

Q. You said you came here to Philadelphia, in consequence of what you had heard about your being arrested, and you came to vindicate yourself?

A. I came here, hearing that the defendants wanted to arrest me, in order that they might do so if they wanted to, and that I might meet any charge if they wanted to bring any against me. I knew, if I was arrested in New York, I would be where I had no friends, and they might give me trouble if any charges were brought against me. I did not know upon what grounds the charges would be made against me, and so I thought it was best to go where I would have somebody to help me, if I had to meet any charge.

Q. And when you arrived here, you took no means of informing these defendants of your presence in Philadelphia, and to inquire whether or not it was true that they were conducting proceedings against you?

A. I did not, here—I did in their store in New York.

Q. That has nothing to do, I suppose, with your coming to Philadelphia for vindication?

A. It had something to do with it.

Q. Have you endeavored to ascertain whether any such thing is in contemplation?

A. Yes sir.

Q. How and from whom did you inquire?

A. I asked Mr. Lindsey, in New York, something about it.

Q. I am talking about Philadelphia.

A. Oh—no sir! I thought I was informed before I came.

Q. Since you arrived in Philadelphia, you have taken no means to inquire whether the defendants contemplated prosecution against you, or not?

A. Not here, in Philadelphia.

Q. How long had you been in Philadelphia prior to your appearance in the examiner's office, for examination?

A. The examination was Monday.—I think I came to the chief examination, Monday morning, I think. Perhaps it was Sunday; I do not remember exactly—It was Saturday evening. I remember now.

Q. Prior to your first examination here?

A. Yes sir; I left New York on the train that leaves there at three o'clock, I think.

Q. Then, am I correct in supposing that the information you had that the defendants proposed a prosecution against you, was not an inducement for bringing you to Philadelphia at all, but that there was another reason which brought you?

A. That was one of the reasons which brought me; yes sir.

Q. And when you got here, that reason ceased to be operative, for you took no action on it and made no inquiry about it?

A. I made no inquiry from them. I was afraid I should be arrested.

Q. Did you make inquiry from any one else?

A. No sir; I do not think I did.

Q. Then it means nothing when you limit your answer to saying you made no inquiry from them?

A. I made no inquiry from anybody in Philadelphia.

Q. Then, although that was one of the reasons which brought you here, you did nothing in pursuance of it after you got here.

A. I am here to the trial. I gave my testimony here.

Q. In what?

A. At the examination in chief.

Q. Well, you have given us another reason for your coming here—now, tell us what the other reason is; the other reason, if you have more than one?

A. Well, I should have come before. I did come here once, expecting to testify, after I received the letter from Mr. Snow; but Mr. Mitchell said that it was better for me not to testify then, and to go back, and come when he sent word.

Q. Then you come, at the solicitation of the plaintiff in this case, for the purpose of testifying here?

A. I did, at their solicitation or notification when the time would be—the proper time. I thought that if I had to meet this, I had better be where I had counsel to help me.

Q. You said that the distinctive feature of Mr. Everitt's improvement upon the folding bed was the extended bracket, making a place for the bed cloths or pillows?

A. Yes sir.

Q. Do you know whether that was practicable, or impracticable, in actual use?

A. As the bed is now constructed it is not practicable for that purpose.

Q. Do you consider that a valuable improvement?

A. No sir; I do not consider it valuable.

Q. Do you know how it operates, in effect; how it operates to the disadvantage of the bed, in point of fact, in actual practice?

A. Yes sir; in some points.

Q. Just state, if you please?

A. It makes the footboard, being so wide, pretty heavy, and requires considerable weight to work it, and requires it to be hinged clear out to the extreme end of the box, so that it has all the leverage against the weights, and it requires a great deal of weight to overcome the weight of the footboard.

Q. Do not you know that in practical use servants are very apt to pull down the bed, before removing the pillows, or bolsters, or whatever is in this receptacle, and that the effect of that was to pry the footboard off its hinges, and so on?

A. Yes sir.

Q. And that was a scource of constant trouble?

A. I do not know so much about that. I saw them in for repairs on that account. I did work on them, but did not know how much of that happened.

Q. Could you state, from the nature of the repairs required, the principle upon which the injury had been inflicted?

A. Yes sir; I used one a little while.

Q. One of these folding-bedsteads?

A. Yes sir; I slept upon it, and I made up my own bed.

Q. Did you get caught in any such trap?

A. Yes sir.

Q. Do you not know that because of that disadvantage they were obliged to discontinue the use of that so called improvement, and that it was worthless?

A. If they did, it was done after I left.

Q. From what you know of it, you do not consider it valuable?

A. I shall have to tell the truth.

Q. We expect you to do nothing else.

A. I did not consider it a very valuable invention in view of the patents that preceded it.

Re-examined.

By Mr. Bowman.

Q. I want to ask you a question with reference to something which has been touched in your cross-examination—in the first place, your attention was called to an agreement between yourself and the defendants. I want to know whether that agreement was not annulled between yourself and the defendants?

A. Yes sir; I think it is written on the back of it there, at the time we closed it up.

Q. You were asked by Mr. Otterson whether your statement with reference to the change of the application for patents by the defendants, which you refer to in your examination in chief, was as true as anything else you have stated; —will you be kind enough to explain what you referred to when you spoke of the records at Washington showing the change as being made? Look at those papers (the application, exhibit No. 63, shown witness,) and explain what the alterations were, that you referred to in your examination in chief, to which Mr. Otterson called your attention?

A. In this first page here, before the specifications commence, is a petition to the Commissioner of patents. In the application for a re-issue, his petition is different from this,

(referring to the exhibit, No. 63, which had been handed the witness,) in that it goes on to state that the patentee believes the patent that is already granted to be worthless on account of defects, in the way it was taken out, or the specifications, and praying the Commissioner of patents to issue a new patent upon it, and to re-issue the patent. The first specification runs as this does.

Q. What do you mean by the first specification?

A. I would say the first application for the re-issue of Stark's patent.

(Objected to by Mr. Otterson on the ground that the parties should produce either the original paper, or an exemplification.)

Q. Go on and explain from the point where you stopped—the first application you said was made by whom?

A. The first application, in Washington, was made by Stark, as this one is signed by me, to run to the Hale & Kilburn Manufacturing Co. When the change of the plan, after we telegraphed to stop the record, was adopted, the first leaf was taken off, and Mr. Mason sat at his desk, and wrote the new one, and changed the application to have it run to Stark himself, while his son sat at the other desk writing the new assignment to correspond with it. Hence, the first application was witnessed by Mr. Roberts, you will notice, and Mr. John Kilburn,—and accompanying that was the assignment. In changing the first page, they did not change the witnesses. The witnesses' names were not changed that came on the back. They only took off the first page, and forgot to make that change. So, there is an inconsistency—you will notice in the date, that Mr. Roberts signed that there, the 27th of February, and it took five or six days to get the new papers and come back,—and hence the new application is dated the Seventh of March, and the new assignment that was made to correspond with it.

Q. This is the first page of the first application, and it is written in whose handwriting?

A. It is written in Mr. Mason's handwriting.

Q. Was it written in Mr. Mason's handwriting, and removed and changed?

A. No sir; not removed.

Q. Will you listen to my question, and understand me before you answer? I want to get it straight, and I think I understand you. I understand you to say that the original application was made out by Stark for the re-issue to run to the Hale & Kilburn Manufacturing Company?

A. Yes sir.

Q. Then, afterward, that was changed by removing the first page of the application, and putting in its place another page?

A. Yes sir; that page was written by Mr. Mason, himself, while his son was writing the assignment, and that page, which is now in the office, is in a different handwriting from the original application which was prepared by his son.

Q. The first page of the original application, as changed, appears in the writing of Mr. Mason, while the remainder of the paper is in the handwriting of his son?

A. Yes sir.

Q. How was the paper changed on its face—the second leaf that was substituted—how does that patent run?

A. It now runs to Stark, himself.

Q. What was that change done for by these defendants—I mean to have it to run to Stark, instead of to them?

A. This contract of Mr. Everitt's contained a clause in which all the improvements of the Hale & Kilburn Manufacturing Company would be held under its provisions; and Mr. Mason said that there was no need, if they wished to manufacture their own improvements, that there was no need of my spending any more time in trying to carry this arrangement out; and, after Mr. Mason went out of the office, I thought it over, and thought of the plans, that the original agreement between Mr. Kilburn and I being carried out, I could bring a suit against the Hale & Kilburn manufacturing company and get a judicial decision on the last clause of the agreement.

Q. You mean the agreement between Mr. Everitt and the defendants?

A. Mr. Everitt and the company, yes sir—and get a judicial decision that Mr. Everitt's patent was really an infringement—and it was to try that, that I took the train without consulting Mr. Mason at all, and came home. Mr. Mason took the papers, and put them up in my box. I had always carried papers there, and I had a box; and he put the application and assignment there, and I told the clerk to put them on file in the morning. I told them, on my return, that they should stop the record of that assignment, and if they did so there would be nothing to show that Mr. Stark had sold them the patent—and it was done. I told them if they would telegraph to stop the record of that assignment, there would be nothing to show that Mr. Stark had sold them the patent. It was stopped; and then, afterward, we went down and made this change—making the application run to Mr. Stark; and the assignment was changed to correspond.

Q. Then, as I understand you, the object of that was to enable the defendants to have suit brought against themselves, and get a judicial decree against Mr. Everitt?

A. That I suppose to be the case.

Mr. Otterson:—That, he says, was his proposition.

The Witness:—Not my proposition to have it run to Stark.

Mr. Otterson:—No; it was your proposition to bring that suit.

The Witness:—Yes sir; I suggested that, but when I went down I saw that the proposition was changed—and it was changed to have Mr. Mason bring that suit, I suppose.

By Mr. Bowman.

Q. Who telegraphed to Washington to have the papers stopped, and not to have the application put on the record in the manner as it originally appears?

A. Mr. Hale—Mr. Henry S. Hale.

Q. I understood you to say that Mr. Mason—the de-

fendants' attorney—called your attention to that clause in the agreement between Mr. Everitt and the defendants?

A. He did. He was reading when I went in, and he turned around to me, and said, "Stevens, read that."

Q. Was Mr. Everitt's patent, and the improvements on his patent, an infringement on any patent until the letters of reissue of Stark's were filed?

A. I do not think it was.

Q. Was it not said by Mr. Mason himself—the attorney of the defendants—that Mr. Everitt's patent was a valid patent?

A. Yes sir; that the claims specified in the patent were valid.

Q. And all this arrangement about the Stark patent was done for the purpose of defeating Everitt in his claim under his patent, and for royalty, was it not?

A. I think that the plan that was adopted was not only to defeat Mr. Everitt, but to induce him to lower his royalty. They thought the royalty was very exorbitant, under the circumstances; that they had patents to buy up, and it was to induce him to lower his royalty, under the circumstances.

Q. You were asked by Mr. Otterson with reference to coming on here to vindicate yourself—you arrived here, you say, on a Saturday night, and on the following Monday, there was a hearing in this case, was there not?

A. Yes sir.

Q. And you came here, and were examined as a witness?

A. Yes sir.

Q. You saw the defendants, here, did you not?

A. I saw Henry S. Hale here.

Q. You have been in Philadelphia since then?

A. Oh! yes sir; what do you mean? Since last week?

Q. Yes sir.

A. Yes sir; I have been here.

Q. The defendants knew it, did they not?

A. Yes sir; they know I am here.

Q. You have not concealed yourself, nor kept out of their way, have you?

A. No sir.

Q. You heard that they were going to have you arrested—and you felt that if they had any charge to make against you you would give them an opportunity of doing it?

A. I felt that I would rather have it done here, for, perhaps, you and Mr. Mitchell would help me.

Q. On page 428 of your testimony in chief, with reference to the discovery of the Stark patent, you said that you exhibited the fact to Mr. Hale—which Mr. Hale was that?

A. To Henry S. Hale—to Warren Hale, also.

Q. Be kind enough to tell me what the papers which I hand you are (Exhibit No. 63 shown witness)?

A. They are an application for a patent on a folding-bed, prepared for me to sign.

Q. Is it not for improvements on folding-beds?

A. Yes sir. "For a new and useful improvement on a folding bedstead." All applications for patents read in that way.

Q. For something that you invented?

A. Yes sir; it was one of the forms that I exhibited to Mr. Mason. There are some slight changes, I think, here, that Mr. Hale made.

Q. State whether or not the defendants knew of Stark and his patent before he, Stark, came on here to Philadelphia?

A. They did.

Q. All of them?

A. Mr. Folger; Mr. Newcombe; Mr. Henry S. Hale; Mr. Kilburn—I showed the drawing of it to them, when I found it, or shortly after.

Now I wish to say one word, before I stop. It has been a great while since I have seen Mr. Mason's handwriting. It is possible that after he made it he had it copied; but the two handwritings are different in the application, anyhow, and Mr. Mason wrote it off, I know, at first, but it may have been in the order of his business to have required another clerk to copy it—but I am certain it was Mr. Mason's handwriting, as it now appears. It was different from the original application.

Q. Please state whether, or not, the defendants are manu-

facturing folding beds under the drawings of the specifications mentioned in that Exhibit, No. 63?

A. Not exactly; they use a little of the features of it. The idea which I struck, to have the bracket come even with the top of the bed, when it was up, and even with the top of the side rail when it is down—that is the feature of the pivoting of the foot-boards away from the extreme end of the bed, and thereby saving more weight—was making a bed that did not come under Mr. Everitt's patent at all.

Re-examined.

By Mr. Otterson.

Q. Then the principle they are showing you, to which you have just referred, is not covered by any patent, as I understand it.

A. They have connected with it some of their own features.

Q. But the particular principle that you have just referred to—is that covered by any patent?

A. No sir; it is not covered by any patent that I am aware of.

Q. With reference to your explanation, you mean, however, to say that the change, alteration, interlineation, or whatever it may be, and in whose handwriting it may be, is to affect the running of the re-issue, as you call it, after it shall have been re-issued?

A. Yes sir.

Adjourned until Monday next, January 26, 1880, at 3 p. m.

Philadelphia, Monday, January 26, 1880.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Mitchell, Mr. Everitt, Mr. Otterson, and Mr. H. S. Hale.

M. Daniel Connolly sworn and examined.

By Mr. Bowman.

Q. You are a member of the bar?

A. I am.

Q. And make a specialty of patent cases?

A. I do.

Q. Do you know Mr. Everitt?

A. I do know Mr. Everitt, and have known him since about 1873, or 1874.

Q. Do you know Mr. Henry S. Hale?

A. I have met the gentleman a couple of times.

Q. Do you know Mr. Cheney Kilburn?

A. I can hardly say I know him. I met a gentleman represented to be Cheney Kilburn at the office of Coppee Mitchell, Esq., on an occasion nearly two years ago. That is the only time I now recollect having met Mr. Kilburn.

Q. I want to direct your attention to that meeting at Mr. Mitchell's office, to which you have just referred—please state, as near as you can, about when that meeting took place?

A. That meeting referred to, took place on the twenty-second day of May, 1878. I am thus precise about the date because I accompanied Mr. Everitt on the occasions referred to, in a professional capacity, and I made an entry—as is customary—of a charge on that service; and something transpired on that occasion that had reference to a personal matter of my own, and I wrote to my brother in Washington—who is my law partner—about that matter. I looked to-day at my letter-book to see the date. That leaves the impression on my mind as stated.

Q. Will you be kind enough to state what the meeting at Mr. Mitchell's office was about?

A. I went there for the purpose—

(Any purpose of the witness objected to by Mr. Otterson.) on the occasion stated I went to the office of E. Coppee Mitchell on Walnut Street, between 5th and 6th; I accompanied Mr. Everitt there and met Mr. Mitchell, Mr. Otterson, Mr. Henry S. Hale and a gentleman who was introduced as Mr. Kilburn, or stated to be Mr. Kilburn, and after a sort of a preliminary interview had taken place, I met Col. R. Mason, of Washington, whom I had known, not intimately, but had known him on the street in a general way for a period of about fifteen years. At that interview was discussed the question of the payment of royalties by the Hale & Kilburn

Manufacturing Company to Mr. Everitt on a patent bedstead, which the company were manufacturing for Mr. Everitt. It was represented that the patent infringed a patent which had been granted to one Stark. Col. Mason stated that he represented Mr. Stark; he came on his behalf,—"Bearing the olive branch;" I think that was the expression he made use of "to the infringers." He intimated that Mr. Stark would be disposed to make an amicable settlement, if the parties paid to him five per cent.—I think it was five per cent., but I won't be positive. To the best of my recollection it was five per cent. of the selling price of the bedstead, as a royalty. Some question was raised by myself as to the validity of the Stark patent, or rather the re-issue of the Stark patent, in view of the decision of the Supreme Court of the United States in the case of Gill vs. Wells. Colonel Mason answered the question and defended the validity of the re-issue. Subsequently to this question—or possibly it may have been prior; but I think subsequently—I asked Col. Mason if the title to the Stark patent was in the patentee, having reason then to suppose it was not. He answered—I cannot remember his exact language; but it was substantially to the effect that it was, or that he believed it was, or that so far as he knew it was. At all events, his language was of such a character as to convey at that time the impression, that so far as his knowledge or information went, Stark was the owner of the patent, and that he, as Stark's representative, was qualified and authorized to make terms in regard to the use of the improvements covered by the re-issue; and it was in the capacity of Stark's representative and attorney, and for the purpose stated, that he said he was present on that occasion. After having delivered himself of his message he rose up and left the office, leaving the other gentlemen named in conversation.

Q. During this interview was there any conversation with reference to the ownership of the Stark patent?

A. I think, at or about the time I put the question already stated, Mr. Mitchell made some remark in the same connection. I do not distinctly remember what it was or what

answer it produced, nor do I now remember anything else that was said about the ownership of the patent at that time.

Q. Did Mr. Mason enter the office of Mr. Mitchell alone?

A. My impression is that he did—some time after the other gentlemen had presented themselves. Still I cannot be positive. I do distinctly remember that several persons were present before Col. Mason entered, and that Mr. Otterson and Mr. Mitchell were conversing between themselves for a few minutes, at least, before Col. Mason's entrance.

Q. You are clear that Col. Mason appeared on that occasion as the representative of Stark?

A. I am positive that he represented himself as being the agent or attorney of Stark.

Q. Do you remember his producing the re-issued letters of the Stark patent, and reading them over, and explaining them to the defendants who were present?

A. I do not know whether or not he produced the reissued letters patent himself, or whether they were produced by any other party. I do remember distinctly, however, his reading over the claims annexed to the letters patent, and specifying in what particular the bedstead manufactured by the Hale & Kilburn Manafacturing Co. under the Everitt patent, infringed upon those claims.

Q. And what did he say was the object of his visit there as to what Stark wanted by way of settlement?

A. He came, as I have already stated—and I think I use his exact language in that respect. To offer or hold out the olive branch to the parties, and that his object was to permit the manufacture to go on on payment of a royalty to Stark of five per cent.

Q. Do you remember Mr. Mason expressing an opinion about the validity of Mr. Everitt's patent, and if so, state what it was?

Mr. Otterson:—I object to all this line of examination. If Mr. Mason was the representative of Stark at the time. I do not know what his statement could have to do with binding us.

The witness:—I have not a very distinct recollection of what was said on that occasion about the matter last enquired about. I have an impression, however, and I think I am not mistaken in it, that he stated—

(The impression of the witness objected to by Mr. Otterson.) According to the best of my recollection, and I think I am not mistaken about it, Col. Mason said he admitted that Everitt's patent—

Mr. Otterson:—I would rather not have what Col. Mason admitted. I prefer to have the facts, or to have a statement of what occurred at the time of the meeting, when we will see whether they amount to facts.

Mr. Bowman: (to the witness.) Please state in your own way what took place on that occasion?

A. Col. Mason stated or admitted that in his opinion substantially Everitt's patent was doubtless a valid one; but subordinate, of course, to the Stark patent.

Cross-examined.

Q. You were one of the solicitors of Mr. Everitt in obtaining this patent, were you not?

A. Yes sir; the firm of which I am a member procured the patent for him.

Q. Where is your office—your individual office, if you have one separate from the firm?

A. At 424 Walnut Street, Philadelphia.

Q. And your firm office?

A. It is the same thing. Our firm has also an office in Washington, 730 5th Street.

Q. Were you in constant communication with Mr. Everitt pending the application for the patent or the proceedings thereon?

A. I do not know what you mean by constant. When the application for a patent is made it is usually some considerable period of time—perhaps on an average, fully a month before any official action is had. During that period of time it is

not customary to hold any communication with the inventor and applicant, unless he should call to inquire about the status of his case.

Q. Did he do that frequently?

A. I do not remember. I think, however, in point of fact, I feel quite certain of that, that he was kept fully advised of the official action on his case.

Q. All the way from the application originally until the patent was granted?

A. Yes sir.

Q. Do you remember that the application was rejected?

(Objected to by Mr. Bowman. First: Because the question is irrelevant to the point at issue, and, secondly: because it is not cross-examination.)

A. Before I answer that question I would state—

Q. I would prefer you would answer the question and make any explanation you choose afterward?

A. I do not intend to answer it, and I will state my reasons for not answering it. It is, that in procuring that patent for Mr. Everitt I acted for him in a professional capacity. Any matters that passed between him and me then were, of course, confidential, and until I should have his permission to disclose those matters, I shall decline to answer any question in regard to them.

Q. You refuse to answer the question then, and are satisfied to put it on that ground; I am not going to make any war between you and myself about anything that you elect to do.

A. I make a qualified refusal, that unless I shall have obtained Mr. Everitt's permission to answer in regard to any professional matter between him and me, I shall, of course, decline to answer the question. Personally, I have no objection to state all that I remember about the matter.

Q. I repeat the question. Do you remember that the application was rejected several times?

Mr. Bowman:—I renew my objection to that question, because the question has nothing to do with the point at issue, and because it makes no difference whether this patent was

rejected ten thousand times, while the fact remains uncontradicted that the patent was issued by the United States Government as a valid patent.

The witness:—I decline to answer the question for the reason already stated.

By Mr. Otterson.

Q. Did you notify Mr. Everitt of the fact that his patent was rejected, as those rejections severally occurred?

A. I decline to answer that question for the reasons given to the former questions.

Q. Do you know upon what ground the application for the Everitt patent was rejected?

Mr. Bowman:—I did not object to the other question, but I now desire a general objection entered to the whole line of this examination. The witness has not said that it was rejected, and I do not think an answer can be got out of him on that subject without such an admission.

Mr. Otterson:—I do not think I can get an answer out of him but I propose to put my questions.

The witness:—I shall not disappoint the cross-examiner's just expressed expectations, and therefore I shall decline to answer the question for the reason already given.

Q. Was it not upon the ground that the Stark patent, and others, covered the precise ground claimed by Mr. Everitt's application?

A. I decline to answer that question for the reason that I have already given, and many times repeated.

Q. Did you not report to Mr. Everitt that his application was rejected, because of the existence of the Stark and other patents, covering practically the same ground?

A. I continue my refusal to answer any question of that character.

Re-examined.

Q. How long have you been in the profession making a specialty of patent cases?

A. For a period of about ten years.

Q. Have you been in active practice during the whole of that time?

A. Very nearly the whole time, without interruption or intermission of any character since the year 1872.

Q. Is it not almost always the rule in the experience of patent lawyers to have applications for patents rejected when first presented? I mean by that, is it not an ordinary thing to have an application for a patent rejected, and the same patent be afterward accepted?

(Objected to by Mr. Otterson, because not a proper subject for re-examination.)

A. I should say that so far as my experience goes—and that experience relates not only to practice as a solicitor of patents, but is also derived from nearly three years experience as assistant examiner in the patent office,—that there is not, perhaps, one application in twenty presented to the patent office, which does not meet with what is ordinarily known as a rejection; that is to say, a refusal to allow the patent on the claims precisely as originally presented.

Elisha E. Everitt recalled and examined.

By Mr. Bowman.

Q. You have heard the testimony of Mr. Henry S. Hale with reference to the springs and bottoms connected with your bed, have you not?

A. Yes sir.

Q. Please state whether or not these spring bottoms are manufactured for your patent bed and improvements?

A. They are.

Q. State whether or not the bottom is a part of your bed, and whether it is covered by your patent?

(Objected to by Mr. Otterson.)

A. My bedstead is not complete without a bottom of some kind. You could not use it without a slat bottom or a spring bottom. The outside casing would not bear the weight of one man without mashing right through. It has to have a bottom of some kind, and the specifications of my patent call for either a slat or spring bottom in the bed.

Q. (Paper shown witness.) What paper is that?

A. This is a circular of the Hale & Kilburn Manufacturing Company; a circular and supplement, with a drawing in it, and two engravings of the spring bed bottom, showing the difference between it and other beds.

Q. Engravings of the spring bed bottom for what bed?

A. The one pinned in the book, and marked "No. 3," is the spring bottom manufactured for that bed.

Q. Where did you get this pattern of the spring bottom for your bed?

A. I copied it as it was as they put them in the bed.

Q. What does this wood-cut in the circular, just over the drawing of the spring bottom for your bed, represent?

A. That represents a spring bed bottom for an ordinary stationary bed; and the one pinned in there, the drawing, is the spring bottom for a folding-bed made expressly for it. They do not use that kind of a spring bed in a stationary bed, it is not made in that way.

Mr. Bowman:—I offer in evidence the circular and supplement, with the tracing pinned to it.

Mr. Otterson:—I object to the offer of the circular and supplement with the tracing pinned to it, because the tracing is not a part of the circular and supplement. I do not object to these matters being offered separately, and being called by their proper names; but one is the defendants' circular, and the other is not.

(The circular, supplement and tracing, each respectively marked, "No. 68, Jan'y 26, 1880, R. A. W.")

By Mr. Bowman.

Q. What is that circular?

A. That is a circular of the Hale & Kilburn Manufacturing Company, distributed by them at the State Agricultural Exhibition, last fall, 1879. The front page has got the date of my original patent on, and the dates of the improvements made on my patent. There is a price list, and in the list they say they sell no Champion folding-bedsteads without spring bottoms. It is mentioned here to be the Champion folding-

bedstead and crib, "the Everitt bedstead" in very small letter. Then there is a supplement and circular of the "New Champion automatic folding-bed and crib" which is a supplement to the circular, and was given out by their salesmen—and you will find the cuts. There is their trade-mark on the frontispiece of looking-glass fronts, as they made them and sold them, "No. 3, looking-glass front"; "No. 12, looking-glass front"; "No. 15, looking-glass front."

Q. Where did you get the small slip containing the spring bottoms as manufactured for your bed?

A. I had it made by a draughtsman.

Q. Is it a correct representation of the spring-bottoms manufactured for your bedstead?

A. It is. They put in some spring-bottoms besides those; but the majority of them are used in the bed. When they put in the other they have to alter it, as there is saddles for the cross pieces to rest in, and no stringers running lengthwise under the cross bars, the same as are in the ordinary spring-bottom, and some of the cross bars they have have a notch in the end to fit over a button, recently.

Q. Is it true that you agreed not to charge any royalty on the spring-bottoms applied to your bedstead and its improvements?

A. It is not true.

Q. Did you ever make any agreement with Henry S. Hale or any of the defendants that the spring-bottoms might be deducted from your royalty?

A. I never did.

Q. Please state what you have done on the beds, or rather tell me the numbers of the beds which the defendants claim are not covered by your patent?

A. No. 16 is one, and I think 17 or 18. They did awhile refuse to pay me royalty on the No. 10 and 11, but afterward they did pay it; but there is no particular bedstead which they make, or have made from the commencement up, that does not have some of the improvements combined with mine, in order to make it a bedstead. There is not a bedstead that does not have improvements belonging to my bed.

Q. Then they are all simply improvements on your patent?

A. Yes sir.

Q. You have heard the testimony of Mr. Henry S. Hale as to the defendants paying the rent for the Chestnut street store, which you occupied. Was that true or not?

A. It is not true. I always paid my own rent, and got the receipts for it.

Mr. Otterson:—We will admit that, to save time.

Mr. Bowman:—You will admit that he paid his rent, and got receipts for that?

Mr. Otterson:—We will admit that he paid his rent; we only insist that he got the money from us with which to do it.

By Mr. Bowman.

Q. You heard what Mr. Hale testified to as to your owing them $2,100 at the end of the year, in which you occupied that store: is that correct?

A. That is not correct. Before the end of the year I paid them $2,380, and I have receipts to show where I paid it, and I have not got them all at that. At the end of that year they owed me money.

Q. You heard the testimony of the same Mr. Hale as to the deduction from your royalty of $160 and some dollars for one-half of a fee which was paid to Mr. Harding and somebody else, attorneys?

A. Yes sir.

Q. Did you ever agree to pay any part of that bill?

A. Not one cent of it——

Mr. Otterson:—I object that this is not a proper subject for rebutting testimony, inasmuch as it is a simple repetition of what the witness has already said in his first examination-in-chief, and we might prolong this examination indefinitely if we are going to examine witnesses simply to restate what they already did state.

Mr. Bowman:—All that I can say in reply to that is, that Mr. Otterson's recollection of the testimony and my own does not agree. I have been careful to read the testimony-

in-chief, word for word, and I have notes before me of those matters which were not touched upon by Mr. Everitt in chief.

Q. You heard the statement of the same Mr. Hale in his testimony, that you agreed with him that your royalty should be settled upon the basis of the lowest wholesale price. Please state whether that is true or not?

A. It is not true. I never had any agreement of that kind. My agreement shows that.

Q. Was there ever any other agreement between you and the defendants on that subject, excepting as specified in the articles of agreement between you?

A. Never. I will here state that when that agreement was drawn up they was in the wholesale manufacturing business to the trade. They made and sold to the trade, and my prices was based on the prices that they was to obtain from the trade. Mr. Kilburn was at that time a member of the firm of Kilburn & Gates, and my furniture was to be sold precisely as they sold others to the trade, not to special agents or their own stores.

Q. You heard what the same Mr. Hale testified to with reference to your having asked about the Stark patent. Were you ever asked to purchase that patent, as stated by him?

A. Not as stated by him. I was asked. The first time I was asked to buy the Stark patent was on the tenth day of May, 1878, at the Permanent Exhibition, in West Philadelphia, by Mr. Kilburn. Mr. Harry S. Hale refused to pay me my money, due then, and referred me to Mr. Kilburn, and I had to go to the Permanent Exhibition to see him; and there he said that Stark would take $30,000 for his patent, or would take five per cent. royalty, and let us go on and make the Everitt bed. I said I had nothing to do with Stark. Well, he said he was not going to pay Stark five per cent. royalty and me seven. They never asked me between the first of February and the tenth of May to buy that royalty for $1,000. They was very careful to keep it from my hearing; not one of them told me.

Q. Is that all in that connection?

A. Mr. Kilburn told me, on the tenth day of May, that he had been to Washington, and had seen the Stark agent or attorney, Mr. Mason, and that Mr. Mason told him he would either sell it for $30,000 or take five per cent. royalty and let us go on and manufacture; and he refused to pay me my money, saying he would not pay Stark five per cent. royalty and me seven. I would state that I am very positive—and there is not one of them that does not know it—that they never told me Stark offered to sell his patent for $1,000—not one of them. They was very careful to keep it out of my hearing. I requested Mr. Warren Hale, when Stark returned from Washington to let me know, that I could see him when he came back, and was here for nearly three months, and they was very careful to keep him out of my sight.

Q. Did you have any talk with the defendants about the rate of discount, which they were deducting from you, in their settlements with you?

A. Yes sir; so far as this; as the discount to the trade, which I, what I am alluding to.

Q. Do you mean by that to their stores?

A. No sir; to their trade here in Philadelphia. I was well acquainted with many of the furniture dealers about town, and they all knew it was my bed, and they were at me to know why they could not get more than 10 per cent. discount. They would only allow the men 10 per cent. off, and the furniture dealers could not take hold of the bed for that money, and they asked me why they could not get more. I asked them, and one day I found out that they were taking 25 per cent. off. I said I was glad of it, and I went and told some parties that they could get the beds 25 per cent. off. They went to the firm, and the firm would not allow them to have them, and they were selling them to their own stores and their own agents at 25 per cent. discount.

Q. You have heard the testimony of Henry S. Hale about their allowing as much as 20 and 43 per cent. off to the Toby Manufacturing Company, in Chicago?

A. Yes sir.

Q. Will you state what you know about that?

A. I did not discover it in any of their books until after we got through here and went up to examine the books in the office, and there we found entries of sales to Mr. Toby of thirty-three and one-third per cent. off. There are only two, I think, over in the books, and they were in February, 1879. We took up to March 7, 1879.

Q. You found these entries made in the defendants' books after these proceeding commenced, and while the investigation was going on before the Master?

A. Yes sir; and I discovered two entries there, over thirty-three and a third off—I think but two—and they were in February and March.

Q. You heard what the same Mr. Hale testified to about the letter of April 10, received from Mr. Mason in Washington?

A. Yes sir.

Q. Will you state on what day you saw that letter at the store of the defendants?

A. I saw it about 10 o'clock on the morning of the tenth day of April, 1878. It was shown to me by Mr. Harry S. Hale and Mr. Kilburn.

Adjourned until Friday next, January 30th, 1880, at 3 p. m.

Philadelphia, Friday, January 30, 1880.

Parties met at the office of the Master.

Present:—The Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

Examination of E. E. Everitt, resumed.

By Mr. Bowman.

Q. I believe the defendants, in their account with you, deducted the cost of a washstand, erected for the centennial exhibition in connection with the exhibit there. Did they make the deduction from your account?

A. They made a deduction for other things, but not for a washstand. They claimed that they made a washstand for me, but it was not true.

Q. You heard the testimony of Cheney Kilburn as to your ordering a washstand?

A. I never ordered a washstand from them in my life. The way that was: I had a patented washstand and desk, and they made an agreement with me, which agreement I have now. I saw them, and they got Mr. Howson to draw up the agreement. After it was drawn up, Mr. Kilburn refused to sign it; and that was the washstand he alluded to. They made it for themselves and kept it themselves. I never did anything of the kind, and he knows it. I had not one cent's worth of furniture on that stand at the centennial; but the time that stand was taken I held the patent of it, and they had not made the agreement. The space that was taken for that stand was taken a year previous to the opening of the exhibition, and, between that time and the time of the opening, Mr. Kilburn made an agreement with me to take the stand himself and manufacture it, which agreement I will show. Mr. Kilburn ordered this agreement drawn up by Howson & Son, which was done, and I asked Mr. Kilburn to sign it; and he kept putting it off, and finally he entirely refused to sign it. I had taken a full-sized model of the washstand to their factory for them to work by, and they had it there for at least four or five months, and then they finally refused to close the agreement.

Q. I think, from the testimony as it appears now, it will give the impression that the defendants commenced the manufacture of your bedstead during the first four months after they signed the agreement. Please state what the real fact is about that.

A. In my testimony-in-chief, I say the first four months of manufacture—not the first four months after the signing of the agreement. There was no bedstead made, or offered for sale, until September of that year. I am led to say, in my testimony-in-chief, that I think I was paid in full. I think so—I am not certain—for the first four months. Mr. Otterson makes it appear that there were no beds made the first four months. I mean the first four months of their manufacture—

September, October, November and December Not the first four months of the year, but the first four months of their manufacture.

Q. September, October, November and December, of 1874?

A. Yes sir.

Q. Being in point of fact the last four months of the year?

A. Yes sir.

Q. You heard the testimony of the witnesses for the defendants, as to the value of your bedstead and improvements. Will you state whether your patent, and the improvements upon it, have received medals at various exhibitions in this country and abroad?

(Mr. Otterson objects.)

A. They have received premiums, medals and diplomas, wherever exhibited in this country. Some of them have my name on them, and one in particular I remember, which was received at the first exhibition it was ever exhibited—the Franklin Institute Exhibition of 1874. It received the highest premium at the centennial for a folding-bed, which premium they are advertising now and have been ever since the exhibition.

Q. Where are those medals, &c.?

A. They are in the possession of the company.

Q. The defendants?

A. Yes sir; at least I suppose so.

Q. Were they the last time you knew anything about them?

A. They were.

Q. Whose advertisement is this? (A copy of the Philadelphia Record of Saturday morning, January 24, 1880, handed to witness.)

A. It is the advertisement of the Hale & Kilburn Manufacturing Co., and contains an engraving of my bedstead at the head of it. It is just such an advertisement as they have published for the last five years, to my knowledge, and, if necessary, I could produce two hundred thousand of those advertisements, which they have published within the last month. It was the only bed that took the premium at the centennial

exhibition, and that fact is published now in connection with their other advertisements.

(Mr. Bowman offers in evidence the copy of the "Record" referred to, merely as proof of the advertisement.

Marked by the Examiner "No. 69. January 30, 1880, S. G. W.")

Mr. Bowman:—I now call upon the defendants to produce all the medals and the awards of merit granted to Mr. Everitt.

Mr. Otterson:—I can only answer now that they are not present, this intimation being the first I have received on the subject.

Cross-examined.

By Mr. Otterson.

Q. You said, in your recent examination, that you paid the rent of your store in Chestnut street, yourself.

A. I did.

Q. Where did you get the money?

A. I got some from Hale & Kilburn. Where did I get my money before I got the store, if not from Hale & Kilburn?

Q. I am not under examination now, and it is not for you to ask questions. It is for you to answer them. How did you pay that money back again?

A. My royalty paid it.

Q. As you got the money?

A. As it came due.

Q. Did your royalty pay the debt as you got the money?

A. Sometimes I paid doubly what I received, and sometimes it did not pay up to the amount I received.

Q. I am speaking now of the money you received from them with which you paid your rent of the Chestnut street store. Were the royalties due you at the time you got the money for that purpose, or do you not know that they were not?

A. I don't think that they were in the fore part. In the latter part my royalties amounted to more than what I received.

Q. Did your royalties, during the time that you occupied the Chestnut street store, amount to enough to pay the rent of that store?

A. I do not think they did.

Q. I am speaking about the money you got for the payment of the rent. Then it was loaned to you by Hale, Kilburn & Co., as they did not owe it to you?

A. They loaned me so much money on notes. I have the notes here if you want to see them.

Q. They loaned you the money?

A. Yes sir.

Q. And they did not owe it to you?

A. Yes sir.; they did owe me some.

Q. Then it is correct that you were in their debt on that account?

A. I was in their debt, but not to the amount that Mr. Hale says I was.

Q. You said, when you were examined the last time, that you did not owe the money and that it was not true that you were in their debt?

A. At the end of the year I did not owe them, I said.

Q. You borrowed the money?

A. I did.

Q. Now, was not the money you paid them, and for which you exhibited their receipts, during your last examination, the money which you had received for beds which you sold while acting as agent for them?

A. No sir; Oh! no. The receipts will show for themselves. I have got the bills and receipts. These are different receipts altogether. (Producing a package of papers and handing same to Mr. Otterson.) I can show all the receipts for goods I bought of them, or sold for them, every month, while occupying that Chestnut street store.

Q. And these receipts have nothing to do then with your agency in selling the bedsteads, or other goods, for them? (Referring to the package of papers produced by witness.)

A. Not that I am aware of. When my money for royalty came due, instead of my receiving the royalty, they kept the money and gave me a receipt for it.

Q. On moneys they had advanced to you previously?

A. Yes sir; those are the receipts.

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Q. Did your royalty pay the debt as you got the money?

A. Sometimes I paid doubly what I received, and sometimes it did not pay up to the amount I received.

Q. I am speaking now of the money you received from them with which you paid your rent of the Chestnut street store. Were the royalties due you at the time you got the money for that purpose, or do you not know that they were not?

A. I don't think that they were in the fore part. In the latter part my royalties amounted to more than what I received.

Q. Did your royalties, during the time that you occupied the Chestnut street store, amount to enough to pay the rent of that store?

A. I do not think they did.

Q. I am speaking about the money you got for the payment of the rent. Then it was loaned to you by Hale, Kilburn & Co., as they did not owe it to you?

A. They loaned me so much money on notes. I have the notes here if you want to see them.

Q. They loaned you the money?

A. Yes sir.

Q. And they did not owe it to you?

A. Yes sir.; they did owe me some.

Q. Then it is correct that you were in their debt on that account?

A. I was in their debt, but not to the amount that Mr. Hale says I was.

Q. You said, when you were examined the last time, that you did not owe the money and that it was not true that you were in their debt?

A. At the end of the year I did not owe them, I said.

Q. You borrowed the money?

A. I did.

Q. Now, was not the money you paid them, and for which you exhibited their receipts, during your last examination, the money which you had received for beds which you sold while acting as agent for them?

A. No sir; Oh! no. The receipts will show for themselves. I have got the bills and receipts. These are different receipts altogether. (Producing a package of papers and handing same to Mr. Otterson.) I can show all the receipts for goods I bought of them, or sold for them, every month, while occupying that Chestnut street store.

Q. And these receipts have nothing to do then with your agency in selling the bedsteads, or other goods, for them? (Referring to the package of papers produced by witness.)

A. Not that I am aware of. When my money for royalty came due, instead of my receiving the royalty, they kept the money and gave me a receipt for it.

Q. On moneys they had advanced to you previously?

A. Yes sir; those are the receipts.

Q. Have you any more of these receipts?

A. I have no more of them here. I have the receipts for the rent which they say they paid, but which I paid. (Producing another package of papers and handing the same to Mr. Otterson.)

Q. These are the notes which you gave to them when they advanced you the money from time to time to pay your rent. (Referring to papers produced by witness.)

A. Yes sir. Let me explain right here. When I took that store I was afraid that my royalties—

Q. What have we got to do with that?

A. I wanted to explain how I gave those notes.

Q. You gave them for borrowed money, did you not?

A. Yes sir; I did.

Q. We do not care anything about your store, or anything about your house.

A. They said they paid the rent, and I say that they did not.

Q. If you have an explanation to make with reference to these notes and the borrowing of that money, I have no objection to your doing so, but I do not want to know the history of your business in Chestnut street.

A. Well, I have an explanation to make. I told Mr. Kilburn, when I took that store, that when my royalty did not amount to enough to pay the rent probably I should require money to be advanced, and he told me that any time I wanted money I should come there and get the money; that he would advance me the money and withhold my royalty. But all the money which is represented by those notes was not used for paying my rent.

Q. But it was money you got from him?

A. I got money from him, but I used some of it for other purposes, and I used other money of mine with which to pay the rent; so that it was not all advanced by them.

Q. To pay the rent?

A. No sir.

Q. What did you pay for your store in Chestnut street?

A. $2250, I think it was.

Q. When did you take it?

A. I think it was the 21st of June, 1875.

Q. How long did you occupy it?

A. About one year. I paid one year's rent on it.

Q. Did you pay rent monthly?

A. Yes sir; I generally drew my rent monthly for that store.

Q. From whom?

A. From Hale, Kilburn & Company, whether it was used for that purpose or not; so that I could calculate pretty nearly what I owed them. My receipts show that I paid $2380 up to the 11th of October, when they were holding those notes.

Q. Your testimony-in-chief would look as if you intended to convey the impression that you had not only repaid the defendants the twenty-one hundred and odd dollars which they had advanced to you, but that you had paid them $2380 more than that, so that they were in your debt. Do you mean to convey that idea?

A. No; I mean to convey the idea that they were in debt to me at the end of Jannary, 1877, when they say they held notes of mine to the amount of $2150. Their notes were all paid off, and they owed me money at that time which their receipts in their receipt book will show. Mr. Kilburn says that I owed it for nearly two years. That is false, for I did not.

Q. Then you did owe them $2100 at one time?

A. I never owed them $2100 in my life, and they know it; nor the half of it. I may have owed them the half of it, but never $2100.

Q. Do you mean to say that they owed you, at the end of 1876, the difference between $2100 and $2380?

A. I do not mean to say that either, because they paid me some money. Along in January, 1877, they owed me money instead of my owing them.

Q. How much did they owe you?

A. They owed me over $100, I know.

Q. How do you know that?

A. I am positive of it. The receipts will show it; and I

recollect very well a dispute about giving that receipt for that amount of money. I contended that I was not getting what belonged to me, and I refused to sign a receipt in full, until Mr. Roberts and Mr. Kilburn and Mr. Noblit all told me that I could go back on a receipt in full, if it was not right, and then I signed it.

Q. From the beginning of your transactions down to about this time, say January 1st, 1877, is it not true that you went to the defendants and drew money from time to time, irrespective of the condition of the accounts between you, gave your notes for the accommodations, and from time to time received back again receipts on account of your royalties, which receipts would operate against the notes you had given from time to time, and that the accounts between you, arising out of this state of the transactions, were settled only about the first of January, 1877?

A. They kept my royalties, and gave me receipts for my royalties. For instance, if my royalty was $100, I went in there and gave them a receipt for the $100, and they gave me a receipt for it to be paid back again; so that I had something to show that I had paid so much money into that concern. Those are the receipts which I just showed you. In January, 1877, I did not own them one cent. They owed me, and their books will show it.

Mr. Otterson: (To the stenographer.) Read the question to the witness.

The stenographer: (Reading.) "Q. From the beginning of your transactions down to about this time, say January 1st, 1877, is it not true that you went to the defendants and drew money from time to time, irrespective of the condition of the accounts between you, gave your notes for the accommodations, and from time to time received back again receipts on account of your royalties, which receipts would operate against the notes you had given from time to time, and that the accounts between you, arising out of this state of the transactions, were settled only about the first of January, 1877?"

By Mr. Otterson.

Q. Will you state whether that is true or not?

A. Yes sir; up to the 1st of December, 1876. But I had received from the defendants, in that interval, money besides that which is represented by those notes.

Q. You say that they owed you how much at that settlement?

A. They owed me over $100; I cannot tell you exactly how much. The first amount they named I refused to accept, and afterwards Mr. Roberts made out an account of seventeen or eighteen dollars more, and I accepted it on account.

Q. Then, on the 1st of January, 1877, you claim that they owed you about $117 on account?

A. It was more than that.

Q. How much was it?

A. It strikes me that it was in the neighborhood of $130.

Q. What was it you received which was satisfactory, you received something, you say?

A. The first amount that they made out was not satisfactory.

Q. But afterwards they advanced the amount and made it satisfactory, as I understand?

A. They advanced part of the way. They did not advance to what I wanted.

Q. But so far as they went, was it accepted by you as being satisfactory at that time?

A. It was accepted, but it was not satisfactory.

Q. Was it accepted as being satisfactory?

A. No sir; it was accepted, but not as being satisfactory, and Mr. Kilburn knows that.

Q. I am now trying to find out what you know.

A. That I know.

Q. Do you know the line of business in which Kilburn & Gates were engaged?

A. They were manufacturers of cottage furniture.

Q. They did not make any bedsteads except cottage bedsteads?

A. They made bedsteads.

Q. Will you answer my question just as I put it?

A. I will.

Q. Then please do so. Did they make any bedsteads except cottage bedsteads?

A. Not that I am aware of.

Q. Did they deal in any bedsteads, that you are aware of, except cottage bedsteads?

A. I know that they dealt in bedsteads made by Reeves & Eastburn, and in bedsteads made by Alfred Horner.

Q. Were those cottage bedsteads?

A. I think they were. I know that they sometimes bought from those firms.

Q. They did not sell our folding-bedstead?

A. They had them advertised in their catalogue. I don't know how many they sold; and I think that they have them advertised now.

Q. Who have?

A. Kilburn and Gates—or had. Kilburn is not in the firm now.

Q. What do you mean by saying that they advertise them now, when the firm has been out of existence for years?

A. I made a mistake. They advertised them in their catalogue some two or three years.

Q. Kilburn and Gates?

A. Yes sir; and I think Gates & Co. advertised them. That is the old firm of Kilburn & Gates. It is Gates & Co. now, and there is a possibility of my being mistaken about the two firms, and as to whether they both advertised. I know one of them did, and, if necessary, I will produce the catalogue.

Q. Do you not know that the firm of Kilburn & Gates has been out of existence for two or three years?

A. I know that; yes sir.

Q. While they were in business together, did you ever know them to sell the folding-bed, or to have one in their place?

A. I know that they made them, and I knew them to have them in their place.

Q. They made them?

A. Yes sir.

Q. Where did they make them?

A. In Vermont.

Q. Folding-beds, after your patent?

A. Yes sir; so Mr. Kilburn said.

Q. When did he tell you that?

A. I think it was in 1875 that they had a lot made of these.

Q. Who had a lot made?

A. Hale, Kilburn & Co. had a lot made by Kilburn & Gates.

Q. What was done with them?

A. I believe that they were sent from the factory in Vermont direct to their branch store in New York.

Q. Kilburn & Gates were not manufacturing them for their own sales?

A. They made them.

Q. But the question is whether they made them for the purpose of dealing in them?

A. I think they made those for Hale, Kilburn & Co.

Q. Did they make them, or deal in them, as a part of their own business?

A. I do not know, but I know that they did sell them, or offered them for sale to their customers, when they had an opportunity here in their city store.

Q. To whom did they offer them for sale?

A. I do not know, but I know that they were advertised in their catalogue.

Q. Can you produce that catalogue.

A. I will try to do so. I get confused between the two firms; but it is advertised either in Gates & Company's catalogue, or in Kilburn & Gates' catalogue.

Q. Did Kilburn & Gates advertise these beds in their catalogue as a part of their business? Is that what you mean?

A. Yes sir; they advertised them for sale. I do not know whether it was a part of their business or not, but they advertised those beds for sale.

Q. Do you not know that it was Hale & Kilburn's advertisement that was simply in their catalogue, offering these things for sale at their place on Sixth street?

A. That might have been the case, but I never saw catalogues gotten up in that manner.

Q. Will you produce the catalogue?

A. I will try to do so. It might possibly be that I am mistaken.

Sur-rebuttal testimony.

Samuel N. Newcomb, called by defendants, sworn and examined by Mr. Otterson.

Q. What is your business?

A. Superintendent of the Hale & Kilburn Manufacturing Company.

Q. How long have you been so engaged?

A. Between five and six years.

Q. Did you ever know Andrew Stark?

A. I have seen him.

Q. Where?

A. At the factory?

Q. Can you tell when?

A. It is two years ago, I should think, or nearly that; I think it was in 1878.

Q. Did you know Asher B. Stevens?

A. Yes sir.

Q. Did Asher B. Stevens ever talk with you about Stark's patent for folding-beds, and show you designs or drawings of the bed, or parts of the bed?

A. Yes sir; I think he did.

Q. Where was it?

A. In my office.

Q. Where is that?

A. On the third floor of the front building.

Q. Do you know when that was?

A. It was at the time that Mr. Stark was at our place.

Q. When did you first hear or know of Stark's bed?

A. When Mr. Stark came there to make some drawings.

That was the first I knew him; and then Mr. Stevens told me that he had a claim or patent on the bedstead.

Q. You never knew anything about it, then, until after you had seen Mr. Stark personally?

A. I had never heard of Stark until I saw him.

Q. And your conversation with Mr. Stevens, and the time of his showing you the drawings, was subsequent then to your knowledge of Mr. Stark personally?

A. Yes sir: the drawings were in the book of reports from the patent office.

Q. Do you know how he came to call your attention to the drawings?

A. He was going into experiments with folding-beds.

Q. You mean Mr. Stevens?

A. Yes sir.

Q. Can you say definitely whether this interview between Mr. Stevens and yourself, in which these drawings were exhibited to you, was before Mr. Stark appeared at all at the place, or whether it was after he appeared there?

A. It was after Mr. Stark appeared there.

Cross-examined.

By Mr. Bowman.

Q. When did you first see Mr. Stark?

A. It was in the winter of 1878; I could not give the date.

Q. Where did you meet him?

A. On the stairs, going into the designers' room.

Q. In the defendants' place of business?

A. Yes sir.

Q. Can you tell in what month it was?

A. It was in January, but whether it was one month after or two, I cannot tell. It was after New Year, 1878, because my year commenced at New Years, and it was after I commenced another year.

Q. Had you any knowledge of him before that?

A. I had never heard of him, that I know of.

Q. Had you ever heard the defendants, or any of them, speak of him or about his patent?

A. No sir.

Q. How long had you known Mr. Stevens previous to your seeing Mr. Stark?

A. I should think I had known him a year and a half.

Q. Previous to your seeing Mr. Stark, was not Stevens experimenting on bedsteads at the defendants' place of business?

A. No sir; I think not. He was on chairs altogether.

Q. You are not positive about that, are you?

A. I am as positive as I am of anything that took place as long ago as that. I would not swear that he never bothered himself about bedsteads before that, but that was the first time that he ever done any experimenting to my knowledge.

Q. When was the first time?

A. When Mr. Stark was about there.

Q. When did he experiment on bedsteads, to the best of your recollection?

A. For a month or more he was experimenting on bedsteads.

Q. Was it not during the months of January and February, 1878?

A. I should not think it was as early as January.

Q. You are not quite positive about that?

A. I would not swear that he did not do anything about bedsteads, but he did not do anything about bedsteads to my knowledge. He did not come and bother me about them until Mr. Stark came there.

Q. When you say that he did not do anything about bedsteads to your knowledge, you mean that he did not bother you about any bedsteads?

A. He did not say anything to me about them.

Q. When did you first hear of the Stark patent?

A. When I saw Mr. Stark.

Q. Who told you about it then?

A. Stevens, I think. I would not swear who told me about it first.

Q. Do you remember when you first saw the plans and drawings of the Stark patent?

A. Yes sir.

Q. When was it?

A. It was at the time Mr. Stark was at the factory.

Q. When was that?

A. It was in the winter of 1878.

Q. In what month?

A. It was after January.

Q. How long after January?

A. I have nothing to fix the particular date, except that he was making a drawing of a reaper and binding machine, and explaining it to me. He said that he had to get out the machine and have it ready for the spring business, so that he could get it into the market for the summer business. I know it was quite early in the season, but I could not say whether it was February or March.

Q. That was when you say you saw the plans and drawings of the Stark patent?

A. Yes sir.

Q. Was Stark present?

A He was not.

Q. Where was he?

A. I do not know where he was. He was in and out, and occasionally I saw him, as he used to come in every few days, and wanted to get into my designers' room to alter his drawings or his plans.

Q. Why are you able to say positively that you did not see the drawings and the plans of Stark's patent until after Stark came on here?

A. Because I never heard of Stark until I saw him.

Q. You might have seen the drawings and the plans of the patent claimed by him, without hearing of him personally, might you not?

A. I think not. I might have seen them, but my attention was never called to them. I never noticed them, and I never knew there was such a patent in existence.

Q. If your attention had been called to the drawings and specifications of a patent before Stark came on, you would have had no interest in it, would you?

A. I took a great deal of interest in the folding-beds, because I was making them.

Q. Would you have had sufficient interest, in looking at drawings and plans of a folding-bed, to note down the fact so as to specially remember about it?

A. If I thought there was anything worth looking after, I would.

Q. Well, did you note that specially in your memory when you saw the plans and specifications of the Stark bed?

A. Yes sir; I looked after it to see what there was in it.

Q. Then you did make a note of the time when you first saw these plans and specifications?

A. Not a memorandum of it.

Q. Did you fix it in your mind—was there anything about the circumstance which caused you to have it impressed upon your mind, so that you could recall it three years afterward?

A. All I have to fix it in my mind is the fact of Mr. Stark's being there and being around there so long, and Mr. Stevens bothering me about the improvements he intended to make, which would do away with Stark's, Everitt's and everybody else's patent; he was going to have a bedstead that would knock everything.

Q. Did you hear what the defendant said about getting up some improvement that would knock everything?

A. They never had any conversation with me about their patent, unless it might be some general remark, but it was nothing to call my attention particularly to it.

Q. After seeing the drawings of the Stark patent, when had you your attention next called to that fact?

A. I should think it was a month or two afterward—in June.

Q. By whom?

A. Stevens.

Q. What did he say?

A. He said Stark's patent didn't amount to anything, and that he could do as well without it as anybody.

Q. You do not understand my question. I have been referring to the fact of your seeing these drawings and specifications of the Stark patent. My question now is, when was your mind next directed to the fact of the time when you saw those specifications and drawings; was it ever afterwards directed to the point of time when you saw the drawings and specifications of the Stark patent?

A. I think it was soon after Stevens left us.

Q. Who called your attention to it?

A. Mr. Harry Hale.

Q. What for?

A. He wanted me to work out some drawings that he had.

Q. Who had—Mr. Hale?

A. Yes sir.

Q. How did that remind you of the specific time when you first saw the drawings and specifications of the Stark patent?

A. It brought to my mind the fact of Mr. Stark being there.

Q. But did it bring to your mind the particular time when you first saw the drawings of the Stark patent?

A. No sir; I think not.

Q. When first did any one call your attention to the specific time when you first saw those drawings and specifications?

A. I do not know that I get the bearing of your question.

Q. I will try to make it intelligible, if I have not done so. you have stated that you saw the drawings and specifications of the Stark patent after Stark came on here first in 1878, and that Mr. Stevens showed them to you after he came on. Now, I want to know whether, and if so when, your attention was ever directed to the point of time when the drawings and specifications were shown to you by Mr. Stevens?

A. I do not know that it ever was until I was asked the question to-day as to whether I remembered the time.

Q. Then you were spoken to about it to-day for the first time, and it was in connection with your being called here as a witness, was it not?

A. I suppose so.

Q. You suppose so. Don't you know so?

A. He did not tell me that he wanted me as a witness when he asked me the question.

Q. Who asked you the question?

A. Mr. Kilburn.

Q. You knew that you were to come here as a witness?

A. I did not.

Q. How did you get here—accidentally?

A. I did not know it until after he had asked me that question.

Q. What question did he ask you?

A. He asked me whether I remembered the time when Mr. Stevens had a conversation with me about the Stark patent.

Q. He told you what Mr. Stevens had testified to, did he not?

A. Yes sir; I believe he did.

Q. And it was talked over between you?

A. There was very little talk we had.

Q. You talked about it?

A. Yes sir; I think.

Q. You think so?

A. Yes sir; we did.

Q. This occurred to-day, and you can speak positively about what took place to-day?

A. Is not that positive?

Q. Yes sir. Now, if you made no note of the fact in your mind and no memorandum, how are you able to speak so positively here to-day as to the precise time when you saw those drawings and specifications?

A. The way I fix it in my mind is by Mr. Stark being there

and Mr. Stevens commencing to work on bedsteads while Stark was there, and the fact that he then began to call my attention to this pattern and that pattern, and to his pattern and his improvements, while Mr. Stark was about the place back and forth.

Q. Then you fix it because you think it is impossible that you heard of the Stark patent before his comg on herein. Is the reason you fix it, because you think it improbable that you should have heard anything connected with Stark until after he came here himself.

A. I had not heard of anything.

Q. Did you ever hear of these defendants writing to Stark, through Stevens or any one else, to know whether Stark lived out west?

A. No sir.

Q. You do not know that they had been communicating with him before he came on here?

A. No sir; they mentioned him to me.

Q. But you do know that Stevens did show you the drawings and specifications of the Stark patent?

A. Yes sir.

Q. And you do know that that was the first time you ever saw them, do you not—when Stevens showed them to you?

A. That was the first time I ever had my attention called to them, or knew anything about them. I might have seen them, the same as looking over the patent office reports, as I frequently do, without paying particular attention to them. There is only a small cut in the reports and it is very imperfect.

Q. And I suppose Mr. Stevens might have called your attention to them in a general way in connection with other things, and you might have looked at them in a general way, without making any note of them.

A. He never troubled me about folding beds until after Stark came there.

Q. I did not ask you about folding-beds; you have a very nice way of evading the question. Will you answer my question: Might not Mr. Stevens have shown you these drawings and specifications, in connection with others in a general way, and you have passed over them in a general way, without charging your mind with them at all, just the same as you say you have examined such things in the patent reports without specially noticing them?

A. He might have called my attention to it, but he did not—he could have done it, but he did not.

Q. You are now in the employ of these defendants?

A. Yes sir.

Q. You are a stockholder of the concern?

A. No sir.

Q. You were?

A. Yes sir.

Q. How long has it been since you ceased to be a stockholder?

A. I sold my stock about the first of January.

Ellery B. Folger, called by defendants, sworn and examined

By Mr. Otterson.

Q. You are in the employment of the Hale & Kilburn manufacturing company?

A. Yes sir.

Q. For how long a time have you been so employed?

A. Seven years, the first of January last.

Q. In what capacity?

A. As factory clerk.

Q. Did you ever see Mr. Stark?

A. I saw him, but I never spoke to him.

Q. Did you know Asher B. Stevens?

A. I did.

Q. Did Mr. Stevens ever talk with you and show you diagrams or drawings of the Stark folding bed?

A. Yes sir; once.

Q. When was that?

A. I think it was some time after the first of January, 1878; I can not state the date exactly.

Q. How do you fix that date?

A. I know it was after the first of January, but I canno tell the date; I know it was two years ago.

Q. How do you remember that it was after the first of January, and not after the first of February, or March, or June, or December?

A. I knew Mr. Stark was making a drawing there for a reaper or something of that sort. I have seen the drawing, but I did not know what it was. At any rate he was there, and it was, as I say, after the first of January, 1878.

Q. Do you mean to say that, at the time of this conversation with Mr. Stevens, when he showed you the drawings of the folding bed, Mr. Stark was then in this city?

A. I couldn't say whether he was in the city, but he had been in the city.

Q. Where had you seen him in the city?

A. I had seen him at the factory, in the designing room; and only there.

Q. Then it was after you had seen Mr. Stark in the designing room that this conversation with Mr. Stevens took place?

(Mr. Bowman objects as leading and as suggesting the answer to the witness.)

A That I can't say, but it was a day or two after I saw him; at least a few days after I heard of him in the city.

Q. What passed between Mr. Stevenson and you at that time, and who else was present?

A. There was no one present at all. It was in the third story, in the small office. I am usually there at noon time, and he showed me the cut in the patent-office reports.

Q. The cut of what?

A. The cut of the Stark folding-bed.

Q. You know that Mr. Stark was either then, or had been very recently in the city, and at that counting-house?

A. It was previous to that that he had been there.

Q. Mr. Stark had been here previous to this interview between you and Stevens?

A. Yes sir: I never heard of Mr. Stark before that.

Q. Did you ever hear of his folding-bed before that?

A. Never.

Q. Are you sure that this was not before you had seen Mr. Stark at the counting-house?

(Mr. Bowman objects on the ground that the same question has been asked several times, and objected to as leading, and the witness has answered it.)

A. Yes sir.

Cross-examined.

By Mr. Bowman.

Q. Can you tell the time when you first saw Mr. Stark?

A. The exact date?

Q. Yes sir.

A. No sir.

Q. Can you tell within two months of it?

A. Yes sir.

Q. When was it?

A. It was after the first of January. I went there the first of January, and I think it was the last of February, but I can't fix the date exactly. I know it was after the first of January.

Q. Then you cannot positively say what month it was after?

A. No sir; but I know it was either in January or February.

Q. Why do you say that?

A. Well, on account of his making this drawing for a reaping machine.

Q. On account of who making the drawing?

A. Mr. Stark.

Q. On account of Mr. Stark's making a drawing for a reaping machine?

A. Yes sir; in the factory—in the drawing room.

Q. When was he making that drawing—in what month?

A. That I can't say. In, either, January or February, but I can't say which.

Q. Why do you say that it was in January, or February, if you cannot tell in which of those months it was? Is it not mere guess-work upon your part?

A. No sir; I know it was after the commencement of my year there at the Hale & Kilburn manufactory.

Q. That is the same reason the other witness gave—is it not?

A. Yes sir; I think it was.

Q. You say that you think it was. Did you not sit here, and hear him say it?

A. Yes sir.

Q. Did you talk this matter over with Mr. Newcomb before you came here?

A. Yes sir—no sir; that is, I said very little about it.

Q. You say, "Yes sir—no sir." Which do you mean?

A. Yes sir; I did.

Q. Did you talk over as to how you would be able to fix this date?

A. No sir.

Q. There was nothing said about that?

A. No sir; there was nothing said about the date.

Q. Then you said that it was in January, or February, because your year with the firm commenced in January ?

A. Yes sir.

Q. How does that give you any reason for swearing that it was in either of those two months ?

A. Well, I can fix time generally very readily, but not the dates.

Q. I do not want you to give dates. I am asking you to give me the month ; I will be satisfied to take a month, and I will give you a range of thirty days to think about. You will not say that it was in January, and you will not say that it was in February, but you say that it was sometime in one, or the other, of those two months.

A. Yes sir.

Q. Now I want to know how you swear to that. Why do you swear to it ?

A. I say because I fix it in this way ; that I know it was after the commencement of my year, and I think it was in the last of January.

Q. That was when you first saw Stark ?

A. Yes sir ; it was when I saw him making the drawing, and when I first saw him.

Q. When you first saw him, you did not know how many times he had been there to see the defendants before that ?

A. No sir.

Q. Did the defendants ever talk to you about Stark ?

A. No sir.

Q. Did they ever tell you that they were corresponding with him ?

A. No sir.

Q. Did you know that they were ?

A. No sir.

Q. Do you remember hearing Mr. Stevens say anything about him ?

A. Nothing more than about that drawing in the patent-office reports.

Q. In what report was it?

A. It was in the patent-office reports. I can't say the year the report was published.

Q. Who had the book?

A. Mr. Stevens.

Q. Were you looking at other drawings?

A. Not at that time.

Q. Were you before that?

A. Not in regard to folding-beds.

Q. I did not ask you about folding-beds. I say, were you looking at other drawings?

A. Yes sir.

Q. In the same report?

A. No.

Q. In the same book?

A. No.

Q. How do you know that, if you cannot tell me in what book this drawing was?

A. Well, because I think that the Stark patent——

Q. I do not want what you think; I want what you know.

A. Because the Stark patent is an old patent, and the drawing that he was showing me subsequent to that, or at least previous to that, referred to another thing altogether of a later date.

Q. Then, as I understand you, you cannot tell us in what month you first saw Stark?

A. I think it was in January.

Q. I do not want what you think, for we might sit here and think until doomsday, but I want to know what you know. You cannot tell us in what month you first saw Stark, positively?

A. Not positively.

Q. Nor can you state positively in what month you first saw the drawing of the Stark bed?

A. No sir.

Q. But you are positive that when you did see it Mr. Stevens showed it to you?

A. Yes sir.

Q. And you are positive that whatever you know about the Stark patent and the drawings and the specifications you learned from Stevens?

A. Yes sir.

Q. When you saw the drawings and the specifications was Mr. Newcomb present?

A. No sir.

Q. Was any one else present?

A. No sir.

Q. You are now in the employ of these defendants?

A. Yes sir.

Q. And you are a stockholder of the concern?

A. No sir.

Q. You were?

A. Yes sir.

Q. When did you withdraw?

A. On the first of January.

(Mr. Otterson offers in evidence certified copy, from the Department of the Interior, of the petition of Andrew Stark for the re-issue of the Stark patent?

Marked by the Examiner, "No. 70, January 30, 1880, S. G. W.")

Adjourned until Wednesday next, February 4th, 1880, at 3 o'clock p. m.

Philadelphia, Wednesday, February 4, 1880.

Parties met at the office of the Master. Present, the Master, Mr. Mitchell, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

R. Mason sworn and examined.

By Mr. Otterson:

Q. Do you reside in Washington?

A. Yes, sir.

Q. What is your business?

A. I am a lawyer by profession; practicing in Patent cases only, however, in the courts and before the Patent Office.

Q. Do you know the Hale & Kilburn Manufacturing Company?

A. Yes, sir; I am acquainted with the members of that company—several of them, at least.

Q. Have you had any professional relations with them?

A. Yes, sir; I have had several employments from them.

Q. With reference to the Everitt folding bed?

A. Yes, sir; that is, I think, the first employment I had at their hands.

Q. Did you ever have occasion to examine the Everitt patent and the state of the art with reference to folding beds?

A. Yes, sir; I did.

Q. I mean, of course, for these defendants; for the Hale & Kilburn Manufacturing Company?

A. Yes, sir; I was employed for that purpose by them and made an examination of the state of the art at the time.

Q. Do you remember when that was?

A. I do not think I can fix the time. It was several years ago. It was very shortly before the date of the Stark reissue.

Q. In examining the state of the art did you come across the Stark patent?

A. Yes, sir. My impression is that I was employed in the first instance to look at the Stark patent, it having been

represented to me that a claim had been made upon the part of Mr. Stark that they were infringing his patent, and I was employed and instructed to examine the Stark patent and to see what it was; and, in connection with that, also the Everitt patent and other rights under it.

Q. Will you just go on, in your own way, and tell what you did in that connection?

A. I found in the examination of that Stark case that while the patent of Everitt, as it then stood was in such shape that, according to my present recollection of it, they did not infringe the claim as it stood. It was easily susceptible of being reissued in such shape as entirely to cover the bed which they were manufacturing under the name of the Everitt bedstead.

Q. Then what did you do in pursuance of that?

A. I advised them, according to that conclusion, that they could not carry on that business with the Stark patent outstanding in the hands of an adversary party; that they were liable to be enjoined and stopped entirely in the manufacture and held responsible for the entire amount of the profits that they might make in the manufacture and sale of the bedsteads.

(Objected to by Mr. Mitchell.)

Q. What was done after that?

A. I told them that they must secure themselves against the Stark patent in some way, and advised them to buy it—(objected to by Mr. Mitchell)—which was done, as I understood from the parties. They sent me, I think, a contract, which they had made with Mr. Stark, on which, according to their direction, I prepared the papers for the reissue of the Stark patent, and I think, at the same time that those papers were issued, prepared a formal assignment of the Stark patent to the Hale & Kilburn Manufacturing Company, which was deposited in my hands as an escrow, to be delivered to Hale & Kilburn upon the determination of an action to be commenced in the name of Mr. Stark, as the

owner of the patent, against them as infringers, and I held it for some time, and finally, I believe, delivered it to them on their calling for it.

Q. What became of that original paper or contract that you speak of?

A. My recollection about that is not distinct. My impression is that it was destroyed at the time, as a paper that had fulfilled its mission when Stark executed the formal assignment.

Q. What was that original paper which was thus destroyed?

A. I cannot state with precision. My impression is that it was a contract for the purchase of the patent. My recollection of it is that it was an informal paper—such a paper as business men prepare. I do not think it was a formal assignment of the patent; but, as I said, my recollection about it is not as distinct as it is in regard to some other things connected with the transaction. I remember distinctly the examination and the advice which I gave them, and the things which were done pursuant to that advice.

Q. Do you remember having any intercourse with Mr. A. B. Stevens on that subject?

A. Mr. Stevens was a client of mine and was a number of times in my office with reference to matters of his invention. He was also, I remember, in the employment at one time of the Hale & Kilburn Company, and we have had some conversations with regard to their affairs, but I am not able to recall any of them.

Q. Do you remember any conversations or business transactions with him, or with the Hale & Kilburn Company, in which he was interested, or interested himself, relating to this bed?

A. My recollection is that Stevens got up some sort of a contrivance that related to convertible beds, but I think nothing ever came of it. I think there was nothing in it. At any rate, I am quite confident I never made any application for a patent on it.

Q. Did you commence, in Mr. Stark's name, suit against the Company?

A. Yes, sir.

Q. Where?

A. In Philadelphia; the Circuit Court of the United States for the Eastern District of Pennsylvania.

Q. What was the purpose of that?

A. When I found the title to this invention, or all that there was of any practical value, in my judgment, in Stark, I advised these parties, the Hale & Kilburn Company, that they must either secure themselves under that patent or discontinue the manufacture of the bedstead; that if they did not it would result in loss to everybody connected with it and stop their manufacture of the bed entirely. I had submitted to me the contract between Everitt and the Hale & Kilburn Company, in which I found that they had agreed to pay a large license fee for a patent that, if valid at all, was only so upon the narrowest constructions and for the most minute details for which a patent could be granted, even under the liberal practice of the Patent Office—(objected to by Mr. Mitchell)— and the price seemed to be utterly disproportioned to the protection that they were obtaining under the patent. At the same time I advised them that it was not desirable to make any breach with Mr. Everitt. Their bedstead was known under his name and I told them that it was a very common thing for men to carry on manufacturing under a patent that was of very little or no account, without the trade making the discovery, and that it was not desirable to advertise the defects in it; the only alternative was to secure the Stark patent or to quit, I understanding that Mr. Stark then was pressing his claim and demand against them as the infringers of his patent. In order that the matter might be brought before Mr. Everitt, and that he might have an opportunity to make a defense to whatever case might exist on the Stark patent, if one did, and in order to make provision in case of an adverse decision on a

patent suit brought against them as the manufacturers, that they might have the privilege of throwing up that patent, I advised them not to complete the purchase so as to have an actual transmission of the title from Stark to them; but that Stark, retaining the title, he should file a bill, or they should notify Mr. Everitt, rather, and call upon him to make a defense, if he had one to make; and that they should employ counsel, without informing their counsel of the fact that there was anything behind the case more than appeared on the surface of it, and instruct him to make a defense if Mr. Everitt was able to furnish one. I understood all the time that they were entirely willing to pay Mr. Everitt a liberal compensation for the use of his patent, but that they were not willing, in view of the fact that there seemed to be no bottom, no title, to the patent, or to the bedstead, rather, to pay the full price stipulated under the conditions of that contract; and, as I said before, the alternative seemed to be either to buy in the Stark patent or quit. If they quit they would lose all their profits in manufacturing the bed and Mr. Everitt would lose his royalty, and I thought it was fair and just, if they could obtain a remodelling of that contract, that they should do so, affording Mr. Everitt the opportunity to make a defense to the Stark patent, if he had any defense to make. That was about the advice, and, in pursuance of that, I filed the bill. This litigation sprang up shortly afterward and I believe nothing was ever done with it. Whether it has been dismissed now or not I cannot advise.

Q. Who prepared the petition for the reissue of the Stark patent?

A. It was prepared in my office. It is in the handwriting of my then partner, D. P. Holloway. The specifications I wrote. I think the original specification that is on file in the Patent Office is in the handwriting of my son, who was then acting as our clerk; but it was copied from a specification written by me.

Q. Have you examined that original petition recently?

A. I have, recently; about ten days or two weeks ago.

Q. Is there any alteration on the face of that petition in your handwriting, changing the running of the reissue from the Hale & Kilburn Manufacturing Company to Andrew Stark, the petitioner?

A. No, sir; it could not have been; for the arrangement did not contemplate any such thing.

Q. That petition was forwarded here for execution, was it not?

A. That is my impression. The witnesses to the case are persons I did not know. That is the usual practice.

Q. Was there any alteration of that paper after it returned to your office, changing the parties?

A. There was a little interlineation of a line relating to some of the formal parts of the petition.

Q. My question was changing the parties to it.

A. Oh no, sir; no, sir.

Q. Do you remember what the interlineation was, or would the exemplification assist you at all?

A. Yes, sir, it would.

Q. (Exhibit No. 70 shown witness.) Look at it and see.

A. I found on an examination of the title to the Stark patent, for which we are obliged in filing an application for a reissue, under the rules of the Patent Office, to present a certified abstract of title from that division of the office which has charge of the titles, that Stark had sold, I think, five counties, part of them in Missouri, and part of them in Kansas. In writing the body of the petition, it had been stated that he was the sole owner, and when I found that these five counties had been sold, I interlined the words as shown in this exemplified copy, "except as to five counties in Kansas and Missouri." That is the only change that was made in the case, except, I think, a similar change made in the oath—(objected to by Mr. Mitchell.) I examined the original record for the purpose of seeing what it did con-

tain, at the request of Judge Otterson, a fortnight or such a matter ago. That interlineation is in my handwriting. The remainder of the paper is in the handwriting of Mr. Holloway.

Q. Mr. Stevens says that in that original paper on file, "you will find enough of it torn off, and written in Mr. Mason's handwriting, to change the parties to whom it runs to—to change it to Mr. Stark;" is that true, or is it not true?

(Objected to by Mr. Mitchell.)

A. It is not true. There is no such mutilation in the record, and it is next to impossible that there could be such a change made in paper in the shape that that was, by tearing out; for if you tore off the lower end of it, you would tear off the signature of the parties to the petition. It is only a short page.

Q. And the only alteration is what you have mentioned?

A. That is the only alteration that appears on the face of the paper, and that was made by me; whether it was made before the execution of the paper, or not, I am not certain.

Q. Mr. Stevens testified with reference to that original paper of which you have spoken, and which you call a contract for the purchase of the Stark patent by the Hale & Kilburn Company, that he delivered it to you in person, it having been handed him by Henry S. Hale, in this city, for that purpose, and that having handed it to you, he returned here, and upon consultation with the parties here, you were telegraphed to not to put the paper on record, because it was an assignmsnt from Stark to their company. Do you remember anything about that, and is that true?

(Objected to by Mr. Mitchell.)

A. I have no recollection that Mr. Stevens brought me that paper. I have examined my office files, and find no evidence of such a document. I have no recollection about it.

Q. Was the paper itself such a one as was in shape for putting on record?

A. As I stated, my recollection of it is exceedingly indistinct. It is rather an impression than a recollection of a paper. I cannot recall the form or shape of the paper. I know it has always been in my mind, since my attention was called to it, that it was a contract for an assignment, and not a formal assignment. If a formal assignment was made, I know of no reason why I should have prepared another.

Q. That paper did not go of record, but the formal one that you prepared is the one that did go on record?

A. Yes, sir, if it was recorded; I am not certain whether it was or not.

Cross-examined.

By Mr. Mitchell.

Q. Were you told by the Hale & Kilburn Manufacturing Company, or any of them, that they had bought this patent from Mr. Stark in February, and had given him a due bill of $1000 for it?

A. I learned that they had bought it. I do not remember how. Mr. Kilburn was in my office, and so was Mr. Stark. I know it is in my mind as a thing that I knew that they had bought it.

Q. Long before you prepared the second assignment?

A. Well, my recollection would be that it was not long before; for my impression is that the whole thing occupied but a few weeks.

Q. Give me some idea, then, as nearly as you can, how long before you prepared the second assignment it was that you learned that the Hale & Kilburn Manufacturing Company had made an absolute purchase of this patent for $1000.

A. I knew of their having bought the patent, or the right of Stark in the patent, for I advised them to do it, and they reported that they had done it. It would be the veriest guess work in the world for me to say how long it would be

before the application for a reissue of the patent being filed; but my impression is that it was only a few weeks.

Q. Do you remember when it was when you first saw the agreement to assign the patent that you speak of?

A. I can only give you, as to that, my impression that the whole thing occupied two or three or four weeks, at the outside?

Q. Can you state the month when you saw it?

A. No, sir; I cannot state the year. It was one of those things that occur in the ordinary course of a pretty large practice, that make no impression on my memory.

Q. Were you informed by them that so far as Mr. Stark or his rights were concerned they had become absolute owners of the patent by means of this first contract or sale?

A. I do not think any information was communicated to me on that subject further than that they had bought this patent.

Q. And had given him $1000 for it?

A. I believe that was a part of the statement.

Q. What interest did Mr. Stark retain in his patent on account of the agreement that you made?

A. None; the assignment that was made by me was an absolute assignment of the interest which he had in his patent; and he retained it—he retained the title until it passed by the formal delivery of the paper to the purchasers, by myself holding it in escrow.

Q. What purpose did you have in holding the paper in escrow?

A. In order that the title might remain in Mr. Stark, and that he might be able to say he was the owner; that he held the title, and could therefore maintain a suit.

Q. Did Mr. Stark have any interest in the patent during that time?

A. Not in equity. He had the legal title.

Q. But it was a bare legal title, and nothing more?

A. Entirely so.

Q. Why was not the Hale & Kilburn Manufacturing Company entitled to the possession and delivery of this second sasignment at any time they chose to ask for it?

A. I know of no reason why I should not have delivered it to them, if they had called on me to deliver it. I think I did deliver it when they called on me.

Q. Did you understand that your holding a paper in such a way was an escrow?

A. I suppose that the title to that patent in law did not pass until the assignment had been delivered; but it was expressly understood by the parties putting the paper in my hands that it should not operate as a delivery to the Hale & Kilburn Manufacturing Company. Therefore, I suppose that Mr. Stark remained the holder of the legal title until the delivery of the papers to the Hale & Kilburn Company.

Q. I did not ask you your opinion as an expert; but you, yourself, have invited the question, and therefore I now ask you the question as an expert.

A. I will take great pleasure in answering it.

Q. Did you understand that your holding a paper in such a way was an escrow?

A. It is a great many years since I read a definition of an escrow, and I may be mistaken about it. I have told you what I understood was the effect of this transaction. I may be wrong; but I understood the effect of that transaction was not to pass a legal title from Mr. Stark, but that it remained in him, and that the paper was in my hands, as his agent, to be delivered over to the other parties, according to the terms of the understanding.

Q. By whom were you employed—by Stark or the Hale & Kilburn Manufacturing Company?

A. By the Hale & Kilburn Manufacturing Company.

Q. You were not employed or paid by Stark at all?

A. Not that I know of. My fees were paid by the Hale & Kilburn Company.

Q. Did you make any charge to Stark for services?

A. No, sir.

Q. Then, at the time you held this assignment, so-called, in escrow, or in escrow so-called, you were the attorney for the assignees, and for them only?

A. No, sir; I was the attorney for both parties for that purpose, so constituted expressly by Mr. Stark, and my fees were paid by the other party.

Q. Was it by your advice that all this was concealed from Mr. Everitt by the defendants here?

A. I do not remember whether I gave any advice about it or not.

Q. Did the defendants, or either of them, communicate to you their purpose of concealing this from Mr. Everitt, in order by the concealment of that information to induce him to relinquish a part of his royalty?

A. No such motive was ever expressed to me. It was to be concealed from Mr. Everitt in order that Mr. Everitt might be induced to make a defence to that Stark patent, if he had one to make.

Q. Do you remember when, on one occasion in Philadelphia, the defendants, or some of them, in your presence, denied that they were the owners of the Stark patent?

A. I remember a conversation, which occurred, I think, in your office, that was to that effect in terms. I understood then, however, so far as I understood their answer to go, to refer to the legal title to that patent.

Q. How long was that after these assignments had been made and brought to you in Washington?

A. Several months, I should think; I cannot remember the time, for I do not remember what time either of them occurred.

Q. How long was it before the filing of the bill by you in the Circuit Court of the United States, in Philadelphia?

A. I cannot say that, because I do not remember when the conversation occurred. I do not remember whether it was

before or after the bill was filed. I do not recall enough of the circumstances to enable me to say.

Q. I understood you to say, a moment ago, in your examination-in-chief, that, in your opinion, a reissue of the Stark patent would cover all that was valuable in the Everitt patent?

A. Everything. It is nothing but a slight modification of the Stark bedstead.

Q. Why, then, did you not advise the Hale & Kilburn Manufacturing Company, if they wanted to get rid of the large royalty they were paying to Mr. Everitt, to give him back his patent as called for by the agreement, and continue manufacturing under the Stark patent, which they had bought?

A. I think I did advise them to do so.

Q. Have you any distinct memory on that subject?

A. A pretty strong impression.

Q. That you did advise them to give Mr. Everitt back his patent. When was that advice given?

A. Always from the time the matter came into my hands down to the last time I spoke of it. There has been no allusion to it for a good while. I know I so advised them after this bill was filed.

Q. You mean the bill under which we are now taking testimony?

A. Yes, sir.

Q. Then it was too late?

A. I did not, however, feel it to be their interest, and did not so advise them, nor did I understand that they so desired as an original proposition, to break with Everett entirely. They were willing to continue, and to pay Everett a royalty and what I regarded as a liberal one; but whenever the matter of the surrender was brought to my mind I advised them. And that is an answer to your question. To give him back his patent; for their was not the slightest need for their infringing it, or anybody else, to make a bed as good

as their own, or something like it. His patent covers nothing but an open hinge and a couple of side brackets, if it covers that, and I doubt if it is as valid for any purpose; and I so advised them.

Q. Do you remember whether, or not, the purpose of Mr. Stevens' going to Washington, to consult you, was not to see whether he could not, with some invention he might make, joined to Stark's bed, make a patent that would entirely free them from Mr. Everett's patent, and that Mr. Stevens' inventions in connection with the Stark patent were submitted to you for your advice?

A. My recollection about that matter is exceedingly indefinite. I recollect that Mr. Stevens made an improvement in a bedstead, and I made some examination of it; and the conclusion of it was that no application was made for a patent. That is all that I recollect about it. I have tried to recollect something about it, and I am entirely unable to do it. There is nothing to fix it in my mind, and it is gone.

Q. Can you recollect whether, or not, there was a purpose on your part to have the Stark patent first run to the Hale & Kilburn Company, who had bought it, and then, afterward, that purpose was changed, and the reissue was made to Stark again?

A. I have no recollection of anything of that sort.

Q. Cannot you remember that such an issue was prepared —that the papers were prepared for a reissue to Stark himself, and then the change was made?

A. No, sir; no such thing appears on the face of tho reissue.

Q. I know that no such thing appears on the face of the papers; but my question was confined to a change which was previously made in the papers. Were not such papers prepared in your office?

A. I find no such papers in my office. I have examined my papers, and I am in the habit of preserving my papers,

and there is nothing to indicate that anything of the sort was ever done. I do not think that there was ever anything of the sort done. I think I prepared the one specification, and asked my partner to write the petition and oath, which are simply copied out of a form book, and that was all that ever was done in that connection. I have no recollection of anything beyond it.

Q. Who was your partner?

A. D. B. Holloway.

Q. Where is he now?

A. He is in Washington.

Q. Do you remember why the second assignment prepared by you and executed by Stark for this patent was not put upon record?

A. I have explained the reason. It was not to go on record. If it went on record it would operate as a transfer of the title. It was deposited in my hands in order that it might not operate as a transfer of the title.

Q. Was not the purpose of the defendants at the time the papers were put in your hands so that they could not operate as a transfer of the title in order that the knowledge of it could be concealed from Mr. Everitt?

A. My understanding of it was that Mr. Everitt was not to be informed of the transfer.

Q. Is Mr. Holloway your partner now?

A. No, sir; we have dissolved.

Q. What is your first name—what does R. stand for?

A. Rodney.

Q. Mr. Holloway, your late partner, was formerly Commissioner of Patents, was he not?

A. Yes, sir.

Q. Do you remember on a certain day, early in 1878, that you met Mr. Stevens at the Pennsylvania Railroad depot in West Philadelphia?

A. No, sir; I have no recollection of it.

Q. And got into a horse car with him, and went down to

the store of the Hale & Kilburn Company on Sixth Street.

A. I remember coming here, and going to the Hale & Kilburn Company's store, and it is quite likely that Stevens met me to show me the way. I really do not remember.

Q. When you got there, did not you look at models that Stevens had prepared, of folding beds, with a view of seeing whether something could be got up to escape the Everitt patent?

A. I do not remember looking at such models. I certainly never looked at them with any such view. My recollection about the matter is that Mr. Stevens had made some improvement that he thought would add to the value of the bedstead, and the matters were submitted to me for examination. I had told them how they could avoid any pretence of their infringing the folding bed.

Q. You mean the Everitt bed?

A. I mean the Everitt bed.

Q. And you say you had told them?

A. Yes, sir.

Q. You had told them before this?

A. Yes, sir; I had told them how it could be covered, and how they could avoid it.

Q. When was your first acquaintance with Mr. Stark?

A. He came to my office, I think, with Mr. Kilburn, about the time the application was filed for a reissue. I think a little before. My impression would be, about; that it was prepared shortly after he was there, and sent to Philadelphia to be executed; but I am not certain about that.

Q. Were you present when the first contract between Mr. Stark and the defendants here was thrown into the stove and burned in your office?

A. If it was thrown into the stove and burned in my office, I did it, I suppose. Nobody else in my office had anything to do with this matter but myself, that I know of.

Q. Have you any recollection of Mr. Stevens going to Washington and to your office, just after the time when you

saw Stark and Kilburn together, with a model for your examination, to see whether if, in connection with the Stark patent, it would do to make the folding bed by?

A. I have no recollection of Mr. Stevens' operations at all, any further that I think I recollect that he had some devices for the improvement of this bedstead; but what they were I am utterly unable to recall. Those matters pass continually under my observation and make very little impression on my mind. I do not attempt to recollect them.

Re-examined.

By Mr. Otterson:

Q. I omitted to ask you how long you had been in practice?

A. I have been practising in Patent cases, to some extent, twenty-five or thirty years. I have, for fifteen years past, made it my business, exclusive of everything else. The character of the business is one that makes it necessary for me to examine patents and compare them with other inventions, older or newer, and other machines, for the purpose of determining questions of infringement, or anticipation—they being pretty much the same thing.

Q. Where have you been practising?

A. My office has been, since 1865, in Washington. I have practised in a good many of the different circuits, as business employments have called me. My office is in Washington.

Q. And you have made a special examination of this subject of folding beds?

A. Yes, sir; I made what was intended to be, and what I supposed was a very thorough examination, an exhaustive one, of the state of the art as it existed at the time. It was necessary to do so, in order to determine whether Stark could reissue his patent, so as to cover the Everitt bed.

Without that I could not have given an opinion on the subject.

Adjourned until Monday next, February 9, 1880, at 3 P. M.

Philadelphia, Monday, February 9, 1880.

Parties met at the office of the Master. Present, the Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale, Mr. J. Warren Hale, Mr. Cheney Kilburn.

Owen D. Roberts recalled and examined.

By Mr. Otterson.

Q. Will you look at your books and state, if you please, when your firm or corporation made their first sale to the Toby Manufacturing Company?

A. I will. The first regular sales to the Toby Furniture Company were made about the 12th to the 15th of October, 1877. We had previously sent them a lot of beds on sale, or consignment, as we call it, but the first regular sale was about October 16th. The first regular charge, I think, was October 16th, 1877, as I find in Salesbook A, p. 573.

Q. What was the rate of discount in that case?

A. Thirty-three and a-third per cent.

Q. Now, state the next sale to them?

A. The next sale to them was on the 17th of October, the same book, page 574.

Q. What was the rate of discount?

A. Thirty-three and a-third per cent.

Q. What was the next?

A. The next was on October 29th, 1877, Salesbook A, page 590, same rate of discount.

Q. Go on, and give the other sales in order.

A. Clear through?

Q. Yes, sir.

A. There are a great many of them.

Q. There are a great many other sales, then, from that time to this?

A. Yes, sir. A great many from that time to this, and at that same rate of discount, up to a certain date, at which the discount changed.

Q. Up to what date?

A. Up to September 14th, 1878, at which time the discount changed to forty-three per cent.

Cross-examined by Mr. Bowman.

Q. When did you say the discount changed to forty-three per cent.?

A. September 14th, 1878.

Q. Will you be kind enough to state how many sales were made after that date on which such a rate of discount was allowed?

A. I cannot answer that at once without going through this whole book. Every bedstead that was charged from that time up to February 11, 1879, was charged at that rate of discount.

Q. Can you show me more than two entries in which that rate of discount was allowed by the defendants?

A. Yes, sir. I suppose I can show you thirty-three, by going right through the book, page after page.

Q. Can you show me one?

A. Yes, sir; here is one, charged September 14, 1878, Salesbook A, page 595, on which the discount is forty-three per cent.

Q. What was the reason for changing the discount so materially to this firm?

A. The reason I have already given in my previous testimony: on account of the great distance from Philadelphia and the high rate of freight, and to enable this firm to sell our goods that we did here, in Philadelphia, to the trade.

Q. Were they special agents of the defendants for the sale of these goods?

A. They were; yes, sir.

Q. Can you name another firm, or anyone else, to whom you allowed such a rate?

A. No, sir.

Q. I think you stated that this firm was in Chicago?

A. Yes, sir.

(Cheney Kilburn recalled and examined.)

By Mr. Otterson.

Q. Mr. Stevens has stated, in his recent examination, that you told him not to let Mr. Everitt know of your dealings with Mr. Stark. Is that true, or not?

A. That is not true.

Q. He testified that you told him to write to the Postmaster at Topeka, Kansas, to inquire if Mr. Stark was there. Is that true?

A. It is not. No, sir. I never requested him to do it.

Q. Did you know anything about his writing to Topeka Kansas, either before or after it was done, if it was done?

A. I never knew anything about it, whatever.

Q. Did you propose to send Mr. Stevens to Kansas to buy the Stark patent?

A. No, sir.

Q. Is Mr. Stevens a likely kind ot person to execute such a trust?

A. He is the last person I should think of sending. If I should want to send a person, he is the last person I should think of.

Q. Who took to Washington the paper that was drawn and executed in your office between Mr. Stark and your Company with reference to the transfer of your patent?

A. I took it myself.

Q. And to whom did you hand it when you got there?

A. To Colonel Mason.

Q. Mr. Stevens says that you handed it to him here, in

Philadelphia, to take to Washington, and that he took it to Washington. Is that true, or is it not.

A. That is not true; I took it myself.

Q. Was it ever proposed, in any of your transactions, that Mr. Stevens should take the assignment of the Stark patent and bring a suit against you in his name, to test the validity of the Everitt patent?

A. I never heard of it.

Q. Did you know anything about anyone telegraphing to Washington from your place to Mr. Mason, directing him not to record that paper?

A. No, sir.

Q. If such a thing had been done, would you likely have been privy to it?

A. Very likely: it would not have been very likely that it should be sent off without my attention being drawn to it.

Q. Was there ever an exigency in the progress of the business which would seem to require such a transaction as that?

A. I do not understand you.

Q. Was there ever an exigency in the business which would seem to require a notice to Mr. Mason to withhold the record of the paper?

A. Not to my knowledge. I never heard of such a thing.

Q. It is said that one of the peculiarities of this folding bed that you have been manufacturing was a movable bottom-board. Did you ever manufacture bedsteads with a movable bottom-board?

A. No, sir.

Q. You never used that feature of the patent at all?

A. Never used it at all.

By Mr. Bowman.

Q. Where did you request Mr. Stevens to write to Mr. Stark?

A. I do not know as I understand your question.

Q. Where did you request Mr. Stevens to write to Mr. Stark?

A. I never requested him.

Q. Do I understand you to say that you never requested him to communicate with Mr. Stark in any way?

A. I never did, in any way, shape, or manner.

Mr. Otterson (to Mr. Bowman): You misunderstand. The question is not that Mr. Stevens wrote to Mr. Stark. Mr. Stevens says he was requested to write to the Postmaster at Topeka, Kansas, which Mr. Kilburn denies.

By Mr. Bowman.

Q. You say you did not request Mr. Stevens to write to the Postmaster?

A. No, sir; I never did.

Q. You do no, mean to say that Mr. Stevens did not write to the Postmaster, do you?

A. I do not know what Mr. Stevens did; but I never requested him.

Q. You had conversations with him, had you not, about his writing to the Postmaster?

A. I have no recollection of ever having any conversation with Mr. Stevens about writing to the Postmaster at Topeka, Kansas,—not the slightest.

Q. Not the slightest recollection?

A. No, sir; not the slightest.

Q. I suppose it is very possible that you might have forgotten it?

A. Well, I have no recollection of any such thing; in fact, I know I never asked him. He would be the last man I should ever have asked.

Q. I have got away from that. I am not talking about your asking him to write; I am asking you if you did not have conversations with him about the result of his writing to the Postmaster?

A. I do not recollect it.

Q. Do you remember his showing you letters received from the Postmaster?

A. No, sir; he might have done so.

Q. He might have done so; but you have no remembrance about it?

A. I have no remembrance of any such document.

Q. Do you say that you never cautioned him not to say anything to Mr. Everitt about his (Stark's) business?

A. No, sir.

Q. Then why were you so careful to conceal it from Mr. Everitt?

A. I do not know that we were cautious about it. We tried to have Mr. Everitt buy with us.

Q. You did conceal it from him, did you not?

A. No.

Q. Did you tell Mr. Everitt you were negotiating with Mr. Mason in this Stark business?

A. Well, Mr. Stark came on here——

Q. No; please answer my question, and we will get on much better. Did you tell Mr. Everitt you were negotiating with Mason & Stark in this matter of the Stark patent?

A. I do not know as we did.

Mr. Daniel Connelly, recalled and examined.

By Mr. Otterson.

Q. Do you remember that the application of Mr. Everitt' for the patent upon his improved bedstead, was rejected?

A. I do.

Q. Do you remember that it was rejected because of the existence of the Stark patent, or the Maine patents, or one of them?

A. According to the best of my recollection the Maine patent was cited as a reference. I have no recollection whatever of the Stark patent having been cited, though it may have been.

Q. Would the exemplification refresh your recollection?

A. I cannot say that it would. I am in the habit of receiving these letters of rejection I might say daily; on some days several of them. It would be simply impossible for me to burden my mind with a recollection of all the references that have been cited in the many hundred applications that I have assisted in preparing and filing since the Everitt patent was applied for.

Q. Then you simply do not remember whether the Stark patent was cited as an obstacle or not?

A. That is so.

Q. Did you report to Mr. Everitt the fact of the rejection?

A. I decline to answer as to any communication that passed between Mr. Everitt and myself in regard to the matter, as it was entirely professional, therefore confidential, and I am not at liberty to disclose it.

Q. Then you decline to answer the question?

A. I do.

Q. Did you not report to Mr. Everitt the fact that his application had been rejected because of the existence of the Stark and the Maine patent?

A. I decline to answer that question for the same reasons given to the previous one.

Cross-examined.

By Mr. Bowman:

Q. It is not an unusual thing to have an application for a patent rejected on first application, is it?

(Objected to by Mr. Otterson.)

A. On the contrary; it is almost invariably the rule.

Q. Do not you know that you did not?

A. I do not know as we did not. I have no recollection of anything about that.

Q. Did you tell Mr. Everitt that you had the assignment

of Stark's patent, and that Mason had prepared the papers?

A. I do not recollect whether I did or not.

Q. Are you not able to say, after all this investigation, positively, that you did not, and have you not so sworn during the course of this investigation?

A. I do not know as I understand the question exactly.

Q. My question is, are you not able to say, positively, that you did not tell Mr. Everitt anything about your arrangements with Stark and with Mason, and your getting Mason to prepare an assignment of the Stark patent to you; and have you not so sworn in this investigation that you did not tell Everitt anything about it?

A. I think I did. I think we did not tell Everitt anything about it.

Q. You think you did not?

A. Yes, sir; I think we did not tell him anything about it—that is, after we tried to get him to buy it.

Q. Then you did conceal it from him?

A. Not in the fore part; we wanted him to buy with us.

Q. But in the fore part you had not communicated with Mason?

A. I do not recollect how that was, but I know in the fore part he had the privilege of buying with us. He said he would not buy; it was not good for anything.

Q. If it was not good for anything, then why did you keep all this business from Mr. Everitt?

A. I do not know that we should tell him anything more than anybody else. We had given him up entirely. He would not buy with us, and we had given him up entirely.

Q. I know that you had given him up, but that is not an answer to me at all. You did keep it from Mr. Everitt, did you not?

A. I do not know that we did; I have no recollection about that?

Q. Did you tell him?

A. I have no recollection about that.

Q. If you had told him, would not you recollect it?

A. Very likely.

Q. And you do not recollect it?

A. I do not recollect it.

Q. You will not swear that you did tell him?

A. After suit was commenced I will not swear that I said anything to him about it.

Q. If you were so careful about having all this to yourselves, and were so careful about communicating any of these facts to Mr. Everitt, is it not very probable that you cautioned Mr. Stevens not to tell Mr. Everitt during these transactions?

A. Mr. Stevens had nothing to do with the transaction.

Q. Please answer my question. My question was, if you were so careful about having all this to yourselves, and were so careful about not communicating any of these facts to Mr. Everitt, is it not very probable that you cautioned Mr. Stevens not to tell Everitt during this transaction?

A. I have no recollection about that.

Mr. Otterson.—I object to the witness being asked to state about probabilities. He has a right to answer about facts.

By Mr. Bowman.

Q. What is your answer?

A. It is not probable that I should say anything more to Stevens than to any other of our employes.

Q. You were present at Mr. Mitchell's office, were you not, during the interview referred to in your examination by Mr. Mitchell?

A. Oh, yes, sir.

Q. Did you tell Mr. Everitt, or Mr. Mitchell, as counsel, on that occasion, that you owned the Stark patent?

A. I do not recollect what was said at that time. There was very little said there in Mr. Mitchell's office, at that time.

Q. You say that you gave Mr. Mason no instructions to keep the Stark patent from the record?

A. No, sir.

Q. You did not give them?

A. Not to my knowledge. I did not know there were such instructions given.

Q. Did not Mr. Mason, as your attorney, advise you not to have them on record, lest Everitt might find them out?

A. I do not recollect anything of the kind.

Q. Well, you know they were not put on record, do you not?

A. Yes, sir.

Q. And do not you know that that was by the advice of your counsel, Mason?

A. Yes, sir.

Q. And did not he tell you why he would not put them on record?

A. I do not recollect. He had the whole thing in his hands, to manage just as he pleased. He was the man who managed the matter, and it was all in his hands.

Q. Then you do recollect his telling you not to put them on record?

A. Never.

Q. But you do not recollect the reason for it?

A. No, sir, I recollect nothing about it.

Q. Why were they not put on record?

A. Oh, I don't know. I am not a lawyer.

Q. Did Mr. Mason ever tell you why they were not?

A. No, sir; not to my recollection.

Q. Why did you take Mr. Stevens to Washington with you when you went to see Mason about this, with Stark?

A. I did not take him.

Q. You all went there together, did you not?

A. I have no recollection of Stevens going down with Stark and myself. He might have been there; but I have no recollection of it.

Q. Then you do not mean to say he was not there?

A. I have no recollection of his being there.

Q. Your recollection may be very imperfect about it, then, may it not?

A. Well, I am pretty sure of it. I know I never employed him to go there.

Q. He went on his own responsibility, did he not, with the understanding he had with your firm?

A. If he went down, he went on his own responsibility.

Q. Were not you to give him an interest in it if he succeeded?

A. No, sir.

Q. No interest at all?—he was doing this for the love of it?

A. He was going to get up a bed, away from everybody else, you know; that was what he was trying to do. He was not going to interfere with Mr. Maine, or Mr. Stark, or Mr. Everitt. He agreed to get up a bed; and, if he got up one, to let us have it for a dollar royalty. That is all I know about his bed business.

Q. Were not you also trying to get up a bed by which you could escape the royalty to Mr. Everitt?—was not this the object of your going into this arrangement with Stark?

A. We were obliged to buy Stark out, or stop our business: or, at least, we were advised by our counsel to that effect.

Q. I suppose if Mr. Stevens could have made any arrangement with Mr. Stark by which to purchase his interest in his patent on better terms than you did yourselves, you would have had no objection in taking the patent from Stevens, would you?

A. We never employed Mr. Stevens——

Q. Will you answer my question?

A. If he had a bed?

Q. Yes, sir.

A. He did not know anything about Stark's patent. We knew of it before Mr. Stevens did. Stark came there; and some of our folks told Stevens about it.

Q. That does not answer my question, although I am very glad you stated that. My question is: If Stevens had made terms with Stark satisfactory to you, you would have accepted those terms, would you not?

A. I do not know as I understand that.

Q. You do not understand that?

A. Please repeat it.

Q. If Stevens had made terms with Stark, and purchased the patent from him upon terms which were satisfactory to you, would you have adopted Stevens' work?

A. Well, perhaps we should. We might have bought the Stark patent from him. If he had found the Stark patent, and bought it, we would have been obliged to buy it from him or Stark.

Q. You made no objections to Mr. Stevens operating in your establishment for the purpose of getting up a bed, did you?

A. No, sir; not at all. He was working at his own responsibility.

Q. And you furnished the material and the room?

A. Yes, sir.

Q. And you made no objection to anything he might have done to acccomplish the purpose which you were after, which was to get up a bed which would defeat Everitt's?

A. Not particularly Everitt's any more than it was everybody else's bed. That is what he was to do. He was to make a clean sweep.

Q. What interest had you in anybody else's bed?

A. He was to go ahead of everybody else.

Q. What you wanted to do was to get a bed which could be made cheaper than Mr. Everitt's bed, and which would make Mr. Everitt surrender a portion of his royalty, or all of it?

A. If he could get up a bed which could be made cheaper, we would have put it in the market.

Q. Will you not answer my question. Was not that your object?

A. Of course, we wanted to get up a bed as cheaply as we could.

Q. And you finally made your own terms, through Stark, with Mason and Mr. Stevens together?

A. Mr. Stevens had nothing to do with it.

Q. After you did that, you had no use for Stevens?

A. We made our terms with Mr. Stark. We had had no use for Stevens for several months before Stark came.

Q. You found that you could do better with Stark yourselves, is not that it?

A. I do not know how well Mr. Stevens could do with him.

Q. Well, in your judgment, you thought you could do better with him than he could?

A. I thought I was as capable of trading for the Stark patent as he was.

Q. And you did the trading with him yourself?

A. I did the most of it, I think.

Q. Did anybody else have anything to do with it?

A. Well, Mr. H. S. Hale was with us occasionally, and some other members of the firm.

Q. You do not mean to say there were no telegraphs sent to Washington on this business, do you?

A. I do not say that.

Re-examined.

By Mr. Otterson.

Q. My understanding is that Mr. Stevens' efforts to get up such a bed as he proposed were a perfect failure?

A. A perfect failure; yes sir.

Q. And that was the end of it?

A. It was not good for anything. He never got up anything that was worth a penny.

Re-cross Examined.

By Mr. Bowman.

Q. Did not you offer him several hundred dollars to get him to sign papers for what he did get up?

A. Nothing on the bed business. It was the chariot chair, and he said he would throw in what was on the bed.

Q. And you were willing to pay him for it, were you not?

A. No, sir; we were willing to pay him for the chair, and he threw in the bed. I did not consider it worth anything myself.

Q. Will you explain to me, then, why you paid such eminent counsel as Mr. Howson to prepare the papers for you, including his invention in the bed, if you did not consider it worth anything?

A. I hardly know. We did not know but what there might be something, you know; but we did not have any such idea when we bought it—at least it had not been talked over with the concern—that there was anything in it.

C. Warren Hale recalled and examined.

By Mr. Otterson.

Q. Do you recollect Mr. Stark calling at your place of business in Sixth street?

A. Yes, sir.

Q. Did he leave any papers relating to his patent in your office on that occasion?

A. No, sir; not a thing.

Q. Did you tell Mr. Stevens that he had done so?

A. Never had any conversation with Mr. Stevens about Mr. Stark.

Cross-examined.

By Mr. Bowman.

Q. When did Mr. Stark call there?

A. He called in the early part of February, 1878.

Q. What time in February?

A. It was the early part; I cannot tell you the exact date.

Q. Can you tell me what week it was or the month?

A. Along in the first of February.

Q. Was it about the 9th of February?

A. It might have been before that; I cannot tell; I know it was along in the first part of February.

Q. Who called with him?

A. Nobody.

Q. What time of the day was it?

A. In the morning.

Q. Was Mr. Stevens then working for you?

A. I cannot say. It seems to me he was.

Q. Was he in the shop on this morning?

A. I cannot say, now. I am not in the shop all the time.

Q. What did Mr. Stark leave with you?

A. Nothing.

Q. Did not he leave a copy of his patent?

A. No, sir.

Q. Did you see Mr. Stark after that?

A. I saw him, now and then. He said then that he was going to Washington.

Q. Stark said so?

A. Yes, sir; Stark said in the morning he was going to Washington.

Q. You saw him frequently after that, did you not?

A. I might have seen him when he came back from Washington.

Q. Did you ever see a copy of his patent?

A. I cannot say.

Q. Do you know whether or not he left a copy of his patent at your office?

A. Not to my knowledge.

Q. He might have left it there and you have not seen it?

A. That I cannot say. I am usually in the private office

there, where any such thing would be left.

Q. But it might have been left and called to Mr. Stevens' attention, without your knowing it, and some other member of the firm might have known it?

A. Hardly so.

Q. Did you have all the dealings with Stark in this instance?

A. No, sir.

Q. Then could not he have been with other members of the firm and have left the papers with them?

A. He might have done so; that I cannot say.

Q. You had various interviews with Mr. Stark and Mr. Stevens about this business, had you not?

A. Never had any conversation with Mr. Stevens in regard to Mr. Stark.

Q. Never opened your mouth to him?

A. No, sir.

Q. You seem very emphatic about some things?

A. I am emphatic on that—strong.

Q. Had any other member of your firm any conversation with Mr. Stevens about the Stark patent?

A. That I cannot say.

Q. You cannot say?

A. No.

Q. Why cannot you speak as emphatically on that subject?

A. Why, he might have talked somewhere else. I cannot tell.

Q. But in your presence?

A. Not in my presence.

Q. Do you remember the occasion when Mr. Stark, Mr. Stevens and Mr. Kilburn all went to Washington together about it?

A. No, sir; I do not.

Q. You do not?

A. No, sir; I do not. I recollect when Mr. Kilburn and

Mr. Stark went, but I do not recollect Mr. Stevens going. I did not see him go.

Q. You did not see him go?

A. No, sir.

Q. And you do not recollect anything about their all going together?

A. No, sir; I do not.

Q. Do you remember Mr. Stevens going to Washington and taking the papers down, and then Mr. Stark and Mr. Kilburn following after him?

A. No sir.

Q. You do not remember that?

A. I do not remember any such thing; no sir.

Q. Do you remember about in March, 1878, after that — I mean after the time when Stevens took the papers alone, and Stark and Kilburn followed after him—all three of them going down together to Washington?

A. No sir.

Q. Do you remember that Mr. Stark stayed in Washington, and Mr. Kilburn and Mr. Stevens came home to Philadelphia together?

A. No sir; I do not remember any such thing.

Q. Then you do not remember much of what did take place about that time?

A. How can I tell what took place in Washington when I was not there?

Q. I am not asking you about what took place in Washington. I am asking you about what took place in your own business office in Philadelphia; and I ask you whether you do not remember any of those business transactions?

A. I do not.

Q. You say you do not?

A. I do not.

Q. Do you remember anything about Stark and the Stark arrangement and about his patent and about his arrangements with Mason?

A. I think my testimony will tell you what I recollect.

Q. Stevens was then working in your establishment, was he not?

A. He might have been.

Q. He might have been?

A. Yes sir.

Q. Do you not know whether he was or not?

A. I could not without referring.

Q. You could not tell without referring?

A. I could not tell you; no sir; because I know he was off and on.

Q. If you cannnot tell without referring whether he was working there or not, how is it you can speak so emphatically in denial as to his having a conversation with you on this subject?

A. I know Stevens was around there; but I cannot say whether he was working or not. He might have been working on his own account. That I cannot tell.

Q. Do you remember telling Mr. Everitt, when Stark first came here, that he had been here and gone to Washington, and, thereupon, Mr. Everitt told you that he would like to know when he returned, as he would be pleased to see him.

A. I do not recollect Mr. Everitt telling me any such thing. I recollect telling him that Mr. Stark had been there, and that Stark said that we were infringing on him, and that Mr. Everitt said, "Pooh! let him snap his whip, or crack his whip," or something like that, "it don't infringe."

Q. Do you not remember Mr. Everitt asking you to let him know when Stark came back?

A. No sir; don't recollect any such thing.

Q. Well, you saw Stark back here, after that, did you not, for months?

A. He was there; I cannot tell you how long.

Q. Until the 8th of May, 1878, was he not?

A. I cannot tell you.

Q. Well, for several months?

A. He was there for a month or two.

Q. And during the whole of that time, and when he was away, did you ever tell Mr. Everitt?

A. No, sir.

Q. Why did you not?

A. Because I had no occasion to.

Q. You knew that Mr. Everitt wanted to see him, did you not?

A. No, sir; he never told me he wanted to see me.

Q. Did not you know that they were both in there at the same time, and you never called Mr. Everitt's attention to the fact, but let Mr. Stark go out without Everitt's knowing it?

A. I know I never called his attention to the fact.

Q. Why did you not?

A. Because I had no occasion to.

Q. You had no occasion to?

A. No, sir.

Q. What! When you knew that Stark claimed to have a patent which he claimed was infringed upon by Mr. Everitt, and he was on here making threats to bring suit against you and against Mr. Everitt, do you mean to say that you had no occasion to tell Mr. Everitt that that was his antagonist, when they were both together in the same store?

A. Mr. Everitt did not seem to care anything about—

Q. Will you not answer that question?

A. He said, "Let him snap his whip, or crack his whip," and, if this was the case, I did not think I had any right to interfere. I knew Mr. Kilburn always attended to the other thing; I did not meddle with it.

Q. Did not you think it was Mr. Everitt's right to know what this man was, and who he was, when he was threatening suit, as you have testified to.

A. I thought, from what Mr. Everitt said, that he did not care, and that he would let him snap his whip.

Q. And you did not think it was worth while to point the man out to him, so that he might know him?

A. I do not know whether they were ever in there together. I am sure I cannot say now.

Q. If Stark was your antagonist, and threatening these suits, why were you keeping him in your establishment and around here for so many months?

A. You will have to go to somebody else for that explanation.

Q. That is your answer, is it?

A. That is my answer.

Q. Well, I am satisfied with it, if you are.

A. I hope you are.

Re-examined.

By Mr. Otterson.

Q. Did Mr. Everitt ever ask you to introduce him to Mr. Stark?

A. No.

Q. Did Mr. Stark ever ask you to introduce him to Mr. Everitt?

A. No, sir.

Q. Do you know of such a circumstance as the two being in the store together at the same time?

A. No, sir; I do not.

Q. When did you first hear of such a thing, if it was ever true?

A. Why, in this office.

Q. In this examination—this minute?

A. Yes, sir.

Q. Did you ever hear of Mr. Everitt asking anyone to introduce him to Mr. Stark?

A. No, sir.

Q. Or express any desire to make Mr. Stark's acquaintance?

A. No, sir.

Henry S. Hale, recalled and examined.

By Mr. Otterson:

Q. Did you ever give to Mr. Stevens any assignment to you, made by Stark, of the Stark patent, that he (Stevens) might take it to Washington?

A. No, sir; I never did.

Q. He says that the paper that Mr. Stark executed, called an assignment, was handed to you by him (Stevens), and he took it to Washington?

A. I never saw that paper that you have reference to.

Q. Did you ever take steps to cause Mr. Stevens' arrest, or did you ever threaten him with any such proceeding?

A. No, sir; I never did.

Q. Nowhere?

A. No, sir.

Q. Did you telegraph Mr. Mason, directing him to hold the record of any paper or assignment of the Stark patent held by him?

A. Never.

Q. Was there ever an interview in your office, on Sixth street, or in this city, in which it seemed to be necessary for such a telegram to be forwarded, and did you ever make the feint to forward any such thing?

A. I never did.

Q. Have you ever manufactured bedsteads, under this patent, with a removable bottom-board?

A. We never have, from the beginning to the end. We did not consider it practical to make them in that way. I understand that the movable bottom-board is contained in Mr. Everitt's first claim, but we never used it.

Q. Have you a patent for the spring bed you use in your bedstead?

A. Yes, sir; we have a separate patent, which was taken out sometime after we commenced to use the bedstead.

Q. Where is it?

A. It is here.

(Letters Patent, No. 160,185, for improvement in bed bottoms, produced by the witness and offered in evidence by Mr. Otterson; the Letters Patent marked "No. 71, February 9, 1880, R. A. W.")

Q. Is that the bottom you use invariably in these bedsteads where a spring bottom is required

A. That is the bottom we use principally. Occasionally we use a bottom of some other man's invention.

Mr. Otterson.—Under the call made upon me by the plaintiff, I now produce the silver medal from the Franklin Institute, with certificate.

The certificate is of date of October, 1874, No. 12, signed by Coleman Sellers, President, and William H. Wahl, Secretary, "as a testimonial of the skill and ingenuity displayed in E. E. Everitt's patent folding bedstead."

The medal is inscribed "Reward of skill and ingenuity of Hale, Kilburn & Co., Philadelphia, Pa., for E. E. Everitt's patent folding bedstead, 1874."

(The certificate and the medal offered in evidence by Mr. Bowman, but not marked by the Master, being considered sufficiently described.)

Mr. Bowman.—(To the witness): Are the medals and testimonials you have produced here to-day all that you have in reference to the Everett bedstead and improvements?

The Witness.—Yes, sir.

Mr. Bowman.—Where is the Centennial Medal?

The Witness.—I have it here. That was given for house furniture, and is so stated on the diploma, which I will produce.

By Mr. Bowman.

Q. That covers the Everitt bedstead, does it not?

A. We had the bedstead there at the time.

Q. And you advertised the bedstead as having carried off the Centennial medal, did you not?

A. It may have been so; I suppose that was included in the medal?

Q. There was no other bed there except that, was there, that carried off the medal?

A. None that I know of.

Q. You have spoken about certain papers which were taken to Washington, and Mr. Otterson asked you whether Mr. Stevens took them, and I think you said no, did you not?

A. I said I did not hand them to Mr. Stevens.

Q. Who did hand them to Mr. Stevens?

A. I could not tell you. To the best of my knowledge Mr. Kilburn took those papers to Washington himself.

Q. You are not sure about that?

A. No; I am not positive about that?

Q. What you are positive about is that you did not hand them to Mr. Stevens?

A. That I am very positive about.

Q. What papers have you reference to?

A. It is the first agreement or contract to purchase the Stark bed, I suppose they have reference to. That paper I never saw.

Q. What papers have you reference to when you say you did not hand them to Mr. Stevens?

A. Well, that is the paper.

Q. Then you have not reference to the specifications and assignment of the Stark patent?

A. Possibly, Mr. Stevens may have referred to those papers as a whole; but I do not know whether he did or not. I never saw them.

Q. Who took those papers to Washington—the specifications and assignment of Stark's patent?

A. I say that my impression is that Mr. Kilburn took them to Washington.

Q. They were witnessed and signed in your office, were they not?

A. I think they were forwarded from Washington to Philadelphia to be signed.

Q. And they were signed and witnessed in your office, were they not?

A. Yes, sir; according to the witnesses I should say they were.

Q. Do you know as a fact that they were?

A. I should say they were, although I never saw those papers. It would not be very likely that Mr. Roberts and Mr. J. B. Kilburn would go to Washington to sign those papers. They probably were done in our office.

Q. And the only means that you have of knowing that they were executed in your office you get from the signatures of the witnesses?

A. Yes, sir; I was very busy about that time, I know, and the only paper that I saw was the due bill I drew in my own handwriting, at the request of Mr. Kilburn.

Q. You had not much to do with the Stark arrangement, had you?

A. I was present a good deal of the time; yes, sir.

Q. If you were present when the most important papers were executed and acknowledged, would not you be likely to remember it?

A. I have just stated that I was not present when those were signed. I was present when a good deal of the talking was going on.

Q. I suppose it is very probable that a good deal was done and said which you have not remembered?

A. There might have been a good deal done and said which I did not see or which did not come under my notice.

Q. Do you pretend to remember all that was said and done about this Stark business, which did come under your notice?

A. No, sir; I do not.

Q. Who forwarded the papers to Washington?

A. I could not tell you that.

Q. Do you know anything about it?

A. Indeed I could not tell.

Q. Do you remember Stark and Stevens and Mr. Kilburn all going there together?

A. No; I do not remember that circumstance. I remember Mr. Kilburn going down to Washington, and, at the same time, that I heard it stated, afterward, that Stevens was there; but I really could not say positive.

Q. Do you remember when that was?

A. No; I do not.

Q. Do you remember telegraphing, or some of your firm telegraphing to Washingnon to notify Mason not to put the specifications on record in the Stark patent?

A. There was no such telegraph ever left at our office to my knowledge.

Q. Not to your knowledge?

A. Not to my knowledge. I certainly never wrote one.

Q. Do yon remember a telegram being sent notifying Mason not to put the reissued specifications on record?

A. No, sir; I do not, and I am very positive there was none sent.

Q. Why are you so positive?

A. Mr. Stevens states that I wrote and sent one—that I know I am very positive about.

Q. Why are you so positive about it; you are not positive about other things that occurred at the same time.

A. Because I had no occasion to write any such telegram, and I know I never did.

Q. You know those papers were not put on record at that time, do you not?

A. They were not. No, sir.

Mr. Otterson (to Mr. Bowman).—Do you mean the specifications now and the papers for a reissue?

Mr. Bowman.—Yes, sir; and the assignment.

The Witness.—I have reference to the formal assignment,

By Mr. Bowman.

Q. Why was it not put on record? Was it not by virtue of some order or direction from the defendants?

A. From Mr. Mason, it was.

Q. As counsel for the defendants?

A. As I understand it, it was so that the title of the patent should not go out of Stark's name, and Mr. Mason was to hold the formal assignment as an escrow.

Q. What do you mean by an escrow?

A. As I understand by that it is not to be an assignment until it is delivered; not to be considered so.

Q. Do not you mean to say that the object was to keep everything from the record which would show an assignment from Stark?

A. The only object was just what I stated, so that the title would not go out of Stark's name, and so that Mr. Stark could bring a suit in his name, and he so ordered Mr. Mason as I understand it.

Q. But the title did go out of Stark's name, and you executed the papers taking it out of Stark's name?

(Objected to by Mr. Otterson because that is a question of law.)

Q. Did not you buy the Stark patent, and pay for it, and were not the papers formerly drawn up and executed by Stark to you; were not the papers regularly drawn and prepared assigning the title to you, and signed and witnessed by your firm?

A. Yes, sir; I should say it was.

Q. And you paid for it?

A. Yes, sir.

Q. And took a receipt for the money, did you not?

A. Yes, sir; but it was understood by all parties that Mr. Mason was to hold that assignment, and it was not to go into force as an assignment until it was delivered.

Q. And Mr. Mason was then your attorney and acting for you, was he not?

A. Yes, sir; he was also the agent of Stark at that time.

Q. If you were paying your money for a patent, and taking an assignment of it, why were you so anxious to keep your title from the record, and why were you so anxious to have Stark sue you?

(Objected to by Mr. Otterson as not being cross-examination, and because whatever explanation the witness was able to give on this subject was given on a previous occasion, and there is no necessity for repeating it here.)

A. That is just what I was going to say, because I explained it on a former occasion.

Q. I would like you to explain again, if you were paying your money for a patent and taking an assignment of it. Why were you so anxious to keep your title from the record, and why were you so anxious to have Stark sue you?

A. That was to see if it would not have some bearing on Mr. Everitt, as we were paying Mr. Everitt a very heavy royalty, an exorbitant royalty, for a patent which, to all appearances, was literally good for nothing, and we felt as though we ought to have some modification of that agreement, after being obliged to go to the expense of the Stark patent. Mr. Everitt always refused to do anything about it or to reduce his royalty one cent, and made the remark that before he would do so he would lose the whole of it.

Q. But you agreed to pay him that royalty, did you not?

A. Yes, sir; we supposed then, when we made that agreement, that we were buying a folding bedstead, and that there was no other such patented bedstead in existence; but we have found since that there were a great many bedsteads patented before that, and both of his claims were so narrow that they would hardly hold water, and we felt as though we had actually been swindled by Mr. Everitt in his selling us a patent that was so weak.

Q. You see you did not discover that Mr. Everitt's bedstead was worthless until you found his royalty was amounting to a large sum, and you wanted to get rid of it?

A. We did know it before; but we should not have objected to it in the least if the Stark and Maine patents had not come up.

Q. If his patent was entirely worthless, and he was swindling you, why did not you stop paying him the royalty; why did you resort to all this scheming and manœuvring to prevent him getting his royalty?

Mr. Otterson.—I object to the counsel for the plaintiff using the words scheming and manœuvring, as offensive.

Mr. Bowman.—I did not object when your client accused mine of swindling him. I allowed your witness to call Mr. Everitt a fraud; however, you have put your objection on record, and now the witness will answer the question.

The Witness.—I do not mean to say here that Mr. Everitt swindled us in point of law; but I do say that he sold us a patent that was just as near good for nothing as could be. We supposed when we bought that patent that we were buying a folding bedstead, and that there was no other folding bedstead in existence.

Q. Do you mean to say that you bought Mr. Everitt's patent?

A. I mean to say, when we made the agreement with Mr. Everitt, he sold it to us subject to a royalty.

Q. He sold it to you subject to a royalty. Do you mean to say that?

A. That is what I understand.

Q. Do you mean to say that he sold you his patent subject to a royalty?

A. Well, that was the time we made the agreement with Mr. Everitt, and that is what I supposed.

Q. If you thought the Everitt bedstead was a swindle, why did you manufacture and sell so many of them. Were you willing to link yourself to a swindling thing?

Mr. Otterson.—The witness has said no such thing. He has not spoken of the bed as a swindle in my hearing, but he has spoken of the contract that Mr. Everitt made with them being under a misrepresentation, inasmuch as they were not informed of the existence of any other patents covering the same subject-matter.

The Witness.—That is exactly what I mean.

Mr. Otterson.—The bed itself was not a swindle.

Mr. Bowman (to the witness).—Now, as Mr. Otterson has had his remark put upon record, and as you have agreed with him, I will have an answer to my question despite Mr. Otterson's objection.

The Witness.—I did not say that it was a swindle.

Mr. Bowman.—I will have the testimony read by the stenographer.

The Stenographer.—The testimony is, "We supposed then, when we made that agreement that we were buying a folding bedstead, and that there was no other such patented bedstead in existence; but we have found since that there were a great many bedsteads patented before that, and both of his (Everitt's) claims were so narrow that they would hardly hold water, and we felt as though we had actually been swindled by Mr. Everitt in his selling us a patent that was so weak."

Mr. Bowman.—Now, after listening to what has been read by the stenographer, answer my question: If you were feeling that you had been swindled by Mr. Everitt by this patent of his, which you say was utterly worthless, why were you willing to manufacture so many of them, and continue in the manufacture for so many years?

A. We felt as though by Mr. Everitt not informing us of the Stark and Maine patents, at first, which, if he had done, we could have bought them. probably, for a song—the Stark patent, at least—and then made the thing strong, and he not having them, we felt as though we were paying him an enormous price. I would just say here that I do not say it was a swindle, and do not mean to be understood in that way.

Q. If Mr. Everitt's patent was so worthless, as you have said, why were you still willing to pay him royalty, even after you had bought Stark's patent?

A. Of course we were willing to divide the thing up—to fix the thing up with him, if we could—but he refused to do anything.

Q. Even after you had Stark's patent, did not you continue to pay Mr. Everitt royalty on his patent, to the full amount?

A. I believe we did, according to agreement.

Q. Do not you know you did?

A. Yes, sir; I think we paid him up to the time of the notification of the Stark suit.

Q. If Mr. Everitt's patent was worthless, why did you pay him this royalty?

A. Well, we had the agreement before us, and, of course, we thought best to pay it.

Q. But you did not agree to pay him for a worthless thing, did you?

A. No, sir; but we did pay it.

Q. And the fact that you did pay it is the only reason you can give for paying it, is it?

A. Yes, sir.

Q. And at the very time you were paying it, you were the owner of the Stark patent?

A. The title was not in our name.

Q. You mean that your name was not on record, do you not?

A. Yes, sir.

Q. But it was in your name, was it not?

A. It was in our name, but it was not delivered, and was not to be considered ours until delivered.

Q. Was it not to be delivered to your attorney, Mr. Mason?

A. It was held as in escrow by Mr. Mason, and Mr. Stark was to engage Mr. Mason as his agent to commence the suit and proceedings just as they have been done.

Q. Was not Mr. Mason your attorney also ?

A. Yes, sir.

Q. And did not you pay him for that work ?

A. Yes, sir; we did.

Q. Then how was Mr. Mason Stark's agent and attorney?

A. All I know about that is what Mr. Mason says.

Q. He could not serve both sides, could he, in the same suit

A. All I know is what Mr. Mason said.

Q. What do you mean by holding papers in escrow ?

A. Just as I said before; I am not familiar with the term.

Q. Where did you get that term from?

A. The first I neard of it was in this connection.

Q. Where did you first get that term. I want to know something about it. I thought I understood what holding papers in escrow meant, but I confess I do not understand its application in this case ?

A. I am not a lawyer myself, and could not tell you.

Q. You used the word "escrow," and where did you get it from?

A. I heard it first in connection with this case.

Q. Who told it to you first?

A. I heard it in connection with this affair.

Q. From whom?

A. Possibly Mr. Kilburn might have spoken to me about it on his return from Washington, that Mr. Mason was to hold it in that manner, and that it was to be considered an assignment until it was delivered.

Q. Are you quite sure that is where you got that word from?

A. I say possibly he might.

Q. Then you are not sure of it?

A. I am not sure of it. Possibly the first I saw of it might have been on the assignment that was sent to us. I cannot say as to that. I know that was the understanding that it was to be held that way from the beginning.

Mr. Otterson.—We close.

Adjourned until Monday next, Feb. 16, 1880, at 3 P. M.

Philadelphia, Monday, Feb. 16th, 1880.

Parties met at the office of the Master. Present, the Master, Mr. Otterson, Mr. H. S. Hale, Mr. Bowman, and Mr. Everitt.

Plaintiff's rejoinder evidence.

David W. McElroy sworn and examined.

By Mr. Bowman.

Q. What is your business?

A. At present I am unemployed. I was a clerk in the Philadelphia Post-office a few weeks ago.

Q. Were you formerly in the employment of the defendants, the Hale & Kilburn Manufacturing Company?

A. No, sir; I was in the employ of Hale, Kilburn & Co.

Q. When did you leave their service?

A. I cannot recollect; I do not remember.

Q. What were you working at there?

A. Well, the last time I was there I was working fitting those Everitt beds, and getting them ready for shipment.

Q. Are you familiar with the spring bottoms used in those beds?

A. Well, I was at that time—the springs used at that time. I have been informed they are different now.

Q. Never mind your information; speak only of your own knowledge.

A. I was, at the time I left there.

Q. Will you state whether or not those spring bottoms differed from the spring bottoms used in other beds?

A. Well, they were made a little different. They were made alike, but there was a difference in the way they were

finished, that is, fitted. Those that were for ordinary beds had ties on the bottom, or cross-ties, which those for the spring beds had not.

Q. Those for the Everitt bed had not the ties on the bottom?

A. No.

Q. Look at those cuts (the drawing pinned on page 11 of Exhibit No. 68, and the drawing above it, shown witness), and be kind enough to state which of those drawings represents the bottom for the Everitt bed?

A. This drawing (referring to the piece pinned on page 11 of Exhibit No. 68).

Q. That represents the bottom of the Everitt bed?

A. Yes, sir.

Q. What does the other cut, printed on the page of the book just above the one you have indicated, represent?

A. It represents the spring bottom for an ordinary bed.

Q. Can you explain as to how these bars (referring to the drawing) are made to fit in the bedstead?

A. Yes, sir; there was at that time an iron saddle that was fastened on the side of the bed, and these slats fit into these castings.

Q. Was there any difference as to the length between the front one and the others?

A. Yes, sir; the one at the head was shorter, cut off shorter than the others, and I think was narrower.

Q. Then in those respects they differed from the ordinary bottom in an ordinary bed?

(Mr. Otterson objected to the witness being led and coached in this way.)

Q. Is that so; in the respects you have mentioned, the bottoms for the Everitt bed differ from the bottoms used in the ordinary bed?

A. In the respects I have mentioned; that is, in the ties, and this fitting in saddles.

Q. Are the bottoms for the Everitt bed made expressly for that bed to fit in there, and so on?

(Objected to by Mr. Otterson.)

A. They are, because the top one is narrower and shorter

Q. I call your attention to the bed No. 3, on page 6, of this exhibit, No. 68 showing a bed with a looking glass front. Please state whether those beds, finished as this cut represents, were manufactured by the defendants, and finished in the way represented in this cut for their stock in trade?

A. Yes, sir.

Q. I call you attention to one in ebony, on page No. 15 of the same exhibit; can you state whether those were manufactured in ebony finish also for their stock in trade?

(Objected to by Mr. Otterson.)

A. That is the way they were finished; some of them.

Q. That is the ebony finish?

A. Some of them were finished in ebony, some plain, some different woods.

Cross-examined.

By Mr. Otterson.

Q. Do you say they were beds finished in ebony and gilt in the time you were in the employ of Hale & Kilburn?

A. Not the entire bed. They were finished; that is, the mouldings, etc., were finished in ebony.

Q. Were the beds finished in ebony while you were in the employ of Hale, Kilburn & Co.?

A. Some of them were.

Q. Were they so made up and kept in stock ready for sale, or were they finished in that way to suit the taste of the particular customer who ordered them?

A. That I cannot answer, because I merely had the finishing of them after they were finished. Of course, I knew

nothing about their order books. All I done was to put the finishing in after they came to me.

Q. When you say "finishing them after they were finished," you mean adapting them to the particular taste of a particular customer?

A. No, sir; I mean putting the fixings in; the particular things—the saddles.

Q. I am talking about the ebony finish?

A. They came to me finished with the ebony or the fancy woods; but whether they were for regular stock or for particular customers I cannot say.

Q. Tell us, to avoid confusion, what your particular duty was in that connection; for what were you employed?

A. I was employed, I suppose, to do whatever I was told; but what I did was to fit these beds and get them ready for shipment.

Q. What do you mean by fitting the beds—getting them ready for shipment?

A. Yes, sir; that was one thing, and putting in the saddles on which the springs rested, the cast iron saddles, and the weights and springs.

Q. And then it was no part of your duty to finish the ornamental part of the bedstead?

A. No, sir.

Q. Do you know whether the defendants had on their floors for sale, and in stock, bedsteads finished in the manner indicated by you?

A. They had them there, but whether they were ordered or whether they were in stock I cannot say.

Q. How many did you see there at a time?

A. There were a great many, but I could not keep the run of them.

Q. I mean how many did you see on the floor of their sales room at any time?

A. There might be one or two to-day, and none to-morrow.

Q. Whereas there might be a dozen or twenty of other finish?

A. Yes, sir; of all finishes and of all styles.

Q. You were inquired of whether they kept those with mirror fronts in stock?

A. Yes, sir.

Q. Do you know whether they did that?

A. They had them in the show room, but whether in stock or not I cannot say.

Q. Did not you know of their changing and taking out the panel fronts and putting in the looking-glass fronts to suit their customers.

A. No, sir; I did not.

Q. How many, with looking-glass fronts di l you ever see upon their floor at any one time?

A. One or two at a time.

Q. Did you ever see as many as two?

A. I think I did. I am not positive.

Q. You are not positive that you ever saw more than one?

A. At a time.

Q. And was that for any other purpose than to show a mode of finishing?

A. I cannot tell you whether they were for sale or whether they had been ordered.

Q. How long has it been since you left there?

A. I cannot remember; I think it was in 1875 that I left there.

Q. These springs that you have spoken of were just as easily adapted to any other bedstead, and used in any other bedstead, as in the Everitt bedstead, were they not?

A. I suppose they could have been made that way by putting these cross-ties on.

Q. What do you mean by "cross-ties"?

A. Strips put on the bottom of the springs similar to that. (Referring to the first cut on page 11 of Exhibit 68.) They were strips upon which the springs rested.

Q. Do you mean to say that those strips in these beds are used in place of webbing in other beds?

A. I suppose that is the idea.

Q. Do not you know? If you do not know, just say so, and do not let us have an evasion.

A. I do not know, because I never fitted any of those beds there.

Q. What bed?

A. The bed shown in the cut just mentioned. (The first cut on page 11 of exhibit 68.)

Q. You say that this spring is adapted to any bedstead, or could be fitted in any bedstead, as well as the Everitt bedstead?

A. I said this (referring to the first cut on page 11 of exhibit 68), was made for others and not for the Everitt bedstead; and this (referring to the drawing pinned on page 11 of exhibit 68) was made for the Everitt bedstead.

Q. But is not this latter as easily adapted to any other bedstead as the Everitt bedstead?

A. I suppose it would be with these additions.

Q. With what additions?

A. The addition of those strips. These (referring to the piece pinned on page 11 of exhibit 68) are made to fit in the saddles.

Q. There is nothing in the spring bed then except the mode of fitting, which is different from any other?

A. They are finished different. I call that finished, putting those cross ties on.

Q. That is merely a means of finishing?

A. Yes, sir.

Re-examined.

By Mr. Bowman.

Q. Please tell whether the bed, to be complete, does not require either a spring or slat bottom?

A. The Everitt bed?

Q. Yes, sir; whether the bed, to be complete, does not re-

quire a bottom of some kind, either a spring bottom or slat bottom?

A. Yes, sir; it requires some bottom.

Q. In order to be complete, without a bottom, there would be no place to lay the mattress on, would there?

A. No, sir; it would fit against the wood part of the bed.

Q. Then the bottom is a very important part of the bed, is it not?

(Mr. Otterson objects to this mode of questioning the witness.)

A. I should judge so.

Nathaniel R. Harris, sworn and examined.

By Mr. Bowman.

Q. What is your business?

A. I am a designer of furniture, and, in fact, a designer of anything where designing is necessary.

Q. Were you in the employ of the defendants?

A. Yes, sir; I was engaged with Hale, Kilburn & Co. at one time, some two years ago.

Q. Were you employed by them to make designs in connection with the Everitt or Champion bed?

A. Yes, sir.

Q. Did you have anything to do with the designs in connection with the ebony finish beds, or any of a different finish?

A. Yes, sir; the mere matter of ebony finish, or mahogany finish, or rose-wood finish or any of those finishes, is about one and the same thing. They have to be finished in the ordinary finish after the color is applied to any bedstead or any piece of furniture.

Q. Different finishing would simply have a different influence as to the different prices. A highly finished bed would have a higher price than an ordinary finished one?

(Objected to by Mr. Otterson.)

A. That is all.

Q. Can you state whether the bottoms in use in the Everitt bed differ from the ordinary bottom of an ordinary bed?

A. Oh, yes; entirely different.

Q. Can you state whether or not the bottom of the Everitt bed is an important part of his bed?

A. It is one of the important points of the bedstead—of the press bed, or the wardrobe bedstead, or the Everitt bedstead—whatever name you choose to call it. I do not know what name you gentlemen call it.

Q. State whether, or not, the bed could be used without a bottom?

A. Well, if it had no bottom, it would not be a bed—certainly not, in my way of looking at it.

Q. Without a bottom, there would be nothing to lie upon but the front or casing of the bed, would there?

A. Certainly not.

Q. And the casing is made of very thin material, is it not?

A. Very thin material, and would not support the weight; certainly, not support the weight of two individuals which would lie upon it.

Q. You made the designs for this bed, did you yot?

A. Yes, sir; I do not know for these, but I made the designs. I think I made the first. I think I made the design for the bedstead that was exhibited in the Franklin Institute—that I know—which I believe the gentleman here, Mr. Harry S. Hale, got the premium for.

Q. Please state whether you made the design for the bed which has a mirror in front?

A. No, sir; I do not know that I ever saw a mirror front bedstead; but that is easily adapted by only taking the panel out and putting the glass in.

Q. I call your attention to the cuts Nos. 3 and 12 on page 6 of Exhibit 68; please state whether or not those beds were designed for mirror fronts?

A. I could not swear that they were designed for mirror fronts, because in the ordinary run of trade cabinet manufacturers occasionally, when customers desire it, take out wooden panels and put in glass ones, or take out glass panels and put in wooden ones. The design of the piece of furniture where glass or wooden panels may be requested, makes no difference to the designer whatsoever, not as to the original construction. That is merely a fancy in regard to the purchaser or sellers. I could not swear that that was made expressly for glass, although it may have been so.

Q. Please tell us, referring to cut No. 3, whether, in a bed designed as this one is, with panels or glass in it, if finished with glass, in yonr judgment, the mirror would be a part of the bed?

A. It would answer the purpose of a wooden panel. That is about all, with the exception that it reflects objects.

Q. Would it or would it not, be a part of the bed?

A. Undoubtedly it would be a part of the bedstead.

Q. And if the wooden panel was used instead of the mirror, would, or would not that panel also be a part of the bedstead?

A. Precisely; the same as the mirror, with the exception of the reflection.

No Cross-examination.

Hugh McComb, Jr., sworn and examined.

By Mr. Bowman.

Q. What is your business?

A. I am employed in the firm of Hale & Kilburn Manufacturing Company.

Q. Have you charge of any special department?

A. Of the folding bedstead department; packing and shipping.

Q. Please look at this drawing (the drawing pinned to page 11 of Exhibit 68, shown witness) and state what it epresents?

A. A spring for a folding bedstead.

Q. What bed?

A. What do you mean by "what bed? What number of bed, what quality of bed?

Q. I do not care. You can give me the number. I have not asked you for a number, but you can give it to me if you want to. You say that this is a spring bottom for a folding bed?

A. That explains all.

Q. Will you state whether or not this is a spring bottom for the Everitt bed?

A. It is a spring bottom for the folding bedstead, whether it is Everitt's bed or any other bed. It can be applied to a folding bedstead.

Q. I have not asked you that, and you will be kind enough to answer my questions. I want you to state whether or not that cut, to which I have called your attention, represents the spring bottom for the Everitt bedstead?

A. Yes.

Q. Why could not you have said so without all this trouble?

A. You said "bedsteads."

Cross-examined.

By Mr. Otterson.

Q. Is that spring adapted only to the Everitt bedstead?

A. No, sir; that spring is adapted to the Hale & Kilburn bedstead, and to the Everitt bedstead, so called.

Q. Can the bed not be used in any form of bedstead?

A. You mean the spring?

Q. Yes, sir.

A. Yes, sir; the spring can be used in any form of bedstead by simply putting a strip on the bottom.

Q. And is not the difference between that spring bottom and the ordinary spring bottoms of the trade a mere differ-

ence of adjustment of the springs to the bedstead; is not the difference between that spring and the ordinary spring bottom used in the furniture trade a mere difference for the purpose of adjusting it to the bedstead it may be wanted in.

A. Yes, sir.

Q. Could not a bed spring, which has been adapted to the Everitt bedstead, be taken out and as easily adapted to any other bedstead as it was first adapted to the Everitt bedstead?

A. Yes, sir.

Q. Then there is nothing peculiar to the spring?

A. No, sir; you can fix up the bed with them, and you could not tell the difference between them lying down on the floor.

Re-examined.

By Mr. Bowman.

Q. You say the only difference is the adjustment?

A. Of the springs.

Q. Do they not have to be made differently in order to adjust them?

A. I said simply by putting the strip on the bottom.

Q. Please answer my question, "yes," or "no;" do not the springs have to be made differently in order to make the adjustment which you speak of—that is a simple question?

A. Well, the way I look at it—

Q. No. I do not want the way you look at it.

Mr. Otterson.—I do not want the witness intimidated.

Mr. Bowman.—The witness will not be intimidated by me or anybody else. (To the witness:) I want an answer to that question, yes, or no?

A. No.

Q. You say "no?"

A. Yes, sir.

Q. Very well, that is an answer. You mean to swear that these two spring bottoms represented in this exhibit (the piece pinned to page 11 of exhibit 68, and the cut immediately above it) are made exactly alike?

A. They are made exactly alike, with the exception of the strip running longitudinally along the bottom of the cross slats.

Q. You mean to say that those cross bars in the drawing of the upper spring are the same as the cross bars in the lower spring, which you say is the spring of the Everitt bed?

Mr. Otterson.—I object to that question as leading, and I object to the counsel cross-examining his own witness.

Mr. Bowman.—My answer to that is, that this is a very willing witness for the defendant, and that I think under the circumstances, my questions are perfectly proper.

Mr. Otterson.—And my answer to that is, that the plaintiff has called the witness and he has no right to impugn him, and that the testimony of the witness does not give the counsel for the plaintiff any license to violate the rules of evidence.

Mr. Bowman—(to the witness).—Now, what is your answer?

A. I do not know as I have any answer to give—do you mean the bar which runs across the bed and has the springs upon it?

Q. Yes, sir?

A. Yes, sir; that bar (referring to the first cut) is the same as that bar (referring to the drawing pinned to page 11 of Exhibit 68); it has the same thickness and the same width.

Q. Are the ends made the same?

A. They are. They are all cut off square.

Q. And the ends in both springs are made to fit in the same kind of saddle, are they?

A. Yes, sir.

Q. Do you mean to say that the coss-bars in this upper spring are made to fit in saddles?

A. Just as much as in the lower one, if you apply the saddles to the bed.

Q. Will you please answer my question?—I have asked you a simple question.

A. And I answered you, yes.

Q. No, sir; You did not; now your answer is yes, is it?

A. Yes, sir.

Q. Did you ever know any saddles to be applied to the bed on which this upper spring is used?

A. Yes, sir.

Q. The same as are used in the Everitt bed?

A. Yes, sir; as *was* used in the Everitt bed.

Q. Do you mean to say the bars of both of those springs are the same length?

A. The head bar of the folding bedstead is a triffle longer than the rest.

Q. That is, there is a difference in the length of all of them, is there not, made to suit the bed?

A. No; there is a difference in one of them.

Q. The head one is a little longer than the others to fit into the bed?

A. Yes, sir.

Q. Then I understand you to say that the springs for the Everitt bedstead have no slat running lengthwise, and have one cross-piece longer than the springs used in the other bed—that is it, is it not?

A. That is it; certain sizes.

By Mr. Otterson.

Q. And those peculiarities are merely for matters of adjustment?

A. That is all.

Mr. Bowman.—I have here a pamphlet, which was re-

ferred to in the cross-examination of Mr. Everitt by Mr. Otterson, in which Mr. Everitt stated he noticed certain advertisements by these defendants, and that he saw them in an illustrated catalogue. Mr. Everitt was called upon to produce the catalogue; he now does so, and I offer it in evidence.

(The catalogue marked "No. 72, February 16, 1880, R. A. W.")

I also offer in evidence the price list that accompanied it.

(The price list marked "No. 73, February 16, 1880, R. A. W.")

I also offer in evidence three price lists of the defendants, pinned together.

(The price lists each marked "No. 74, February 16, 1880, R. A. W.")

I offer them for the purpose of showing the printed declarations of the defendants as to their selling the Everitt bed with the springs and bottoms, and I call special attention to the paragraph which states that no beds are sold without the bottoms.

I also offer in evidence a certified copy of the oath of Andrew Stark in the matter of the re-issue of Letters Patent granted to him.

(The certified copy marked "No. 75, February 16, 1880 R. A. W.")

Mr. Bowman.—I now call upon the defendants to produce their answer of April 10, 1878, to the letter of R. Mason to them. I also call on them to produce the answer of R. Mason to their letter of April 10, 1878, the answer being dated April 11, 1878.

I also offer in evidence the letter from the defendants to

Mr. Everitt, dated October 9, 1877, with the envelope with which it was inclosed.

(The letter and the envelope each marked "No. 76, February 16, 1880, R. A. W.")

Adjourned until Monday next, February 23, 1880, at 3 P. M.

The meeting which was arranged for Monday, February 23rd, 1880, was not held, on account of the day being a legal holiday, the Sunday preceding being Washington's Birthday; but it was understood between Counsel and the Master that a meeting should be held on Friday, February 27th, 1880, at 8 P. M.

Philadelphia, Friday, February 27th, 1880.

Parties met at the office of the Master. Present, Mr. Mitchell, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale; present, also, Mr. Asher B. Stevens.

David P. Holloway, affirmed and examined.

By Mr. Mitchell.

Q. Where do you reside?

A. Temporarily, in Washington City. My legal residence is in Indiana.

Q. What is your occupation—attorney, is it not?

A. I am a solicitor of patents.

Q. Did you formerly hold any office in the Patent Office?

A. I was Commissioner of Patents for five years—for nearly five years.

Q. When?

A. From 1861 to 1865.

Q. Have you ever held any other office under the United States Government?

A. I was a member of Congress at one time.

Q. What was your occupation in 1878?

A. Solicitor of Patents.

Q. Where was your place of business?

A. 514 9th street, N.W., Washington City.

Q. Are you acquainted with the defendants, the Hale & Kilburn Company, or with any of the persons composing that corporation?

A. I have met Mr. Kilburn.

Q. Do you remember his first name?

A. I do not know it.

Q. Was it Cheney Kilburn?

A. I do not remember his first name.

Q. Are you acquainted with Mr. Henry S. Hale, the treasurer?

A. Not that I know of.

Q. Did you have any dealings with them in the month of February, 1878?

A. Our firm had;—yes, sir.

Q. What was the name of that firm?

A. D. P. Holloway & Co.

Q. What business relations did you have with them in February, 1878?

A. Soliciting patents.

Q. What particular patent did you have on hand at that time?

A. We had the reissue of a patentee named Lee.

Q. What was that?

A. For a bed-lounge—and one for Mr. Stark.

Q. Do you remember the first name of Mr. Stark?

A. I do not.

Q. When did you have the Stark patent.

A. In 1878, I think.

Q. Do you remember what month it was?

A. I can only say it was in the spring of the year.

Q. Look at the paper which I show you (letter of February 27, 1878, written under the printed heading of "Office

of the Hale & Kilburn Manufacturing Company." Shown witness)—(it being stated by Mr. Mitchell that all the letters to be shown the witness in the course of the examination of this afternoon are written under the same printed heading of "Office of the Hale & Kilburn Manufacturing Company"), and tell me where that paper came from?

Mr. Otterson.– I do not see what this will lead to; but, at present, it would seem that the witness had occupied confidential relations with the defendants, as their counsel. If that is so, I object to his being further examined on this subject.

By Mr. Mitchell.

Q. Are you a member of the bar?

A. I am not.

Q. Have you ever been admitted to the bar?

A. I have not.

Q. Can you remember when you received that letter, if you ever did receive it?

A. I do not remember the circumstances of getting that letter.

Q. Did you ever see this letter before?

A. Yes, sir.

Q. Where did I get it?

A. I suppose you got it from our office—not you, personally; but it came from our office.

Q. Where was it found in your office?

A. In the regular file of the Hale & Kilburn Manufactur ing Company.

Q. In their correspondence with your firm?

A. Yes, sir.

Q. Was it received by your firm?

A. It was.

Q. You cannot say how, can you?

A. No, sir; I have no recollection of any particular letter

(The letter offered in evidence by Mr. Mitchell, and marked "No. 77, February 27th, 1880, R. A. W," and read by Mr. Mitchell as follows:)

Philadelphia, February 27, 1878.

Messrs. D. P. Holloway & Co.,

514 Ninth street, Washington, D. C.

Gentlemen:—Enclosed please find our check for eighty dollars for fees in Stark's reissue case. We also return herewith all the papers signed as requested together with the original patent and the assignment to be recorded. We would like to ask you one question: If you secure the claims, as stated in the specification, will we not then be free from Everitt without altering the construction of our bed at all? We must get clear from Everitt if possible, and we prefer not to alter the bed if it can be avoided. We think you understand our position, and will act accordingly.

Very respectfully,

Hale & Kilburn Manufacturing Company,

H. S. Hale, Treasurer.

Mr. Mason has the Everitt contract.

By Mr. Otterson.

Q. Who constituted the firm of D. P. Holloway & Co.?

A. Rodney Mason and D. P. Holloway.

Q. Is Rodney Mason a member of the bar?

A. He is.

Mr. Otterson: Then I object to all this line of testimony.

By Mr. Mitchell·

Q. Look at this paper (paper shown witness), and say where that came from?

A. From the best of my knowledge and belief, it came from our office—from the files of Hale, Kilburn & Company.

(The letter offered in evidence by Mr. Mitchell, and marked, "No. 78, February 27th, 1880, R. A.W.," and read by Mr. Mitchell as follows:)

Philadelphia, February 28, 1878.

Mr. R. Mason.

Dear Sir:—Yours of yesterday is at hand. We think it best to drop the wash-stand for the present, as there seems to be such an almost endless variety. Mr. Stevens left for Washington last night, and took with him Stark's papers and check. You understand, and we suppose, that if Stark's patent can be made to cover Everitt, we do not care to make any alterations in the bed, or adopt any of Mr. Stevens' plans. The bed is just splendid as it is, and we hope you can fix us all right.

Yours, etc.,
The Hale & Kilburn Manufacturing Company,
Per H. S. H.

(The offer of the letter in evidence objected to by Mr. Otterson.)

By Mr. Mitchell.

Q. I hand you a telegram. Where did I get it?

A. From our office, I presume—from the same file of papers.

(The telegram offered in evidence by Mr. Mitchell, and marked "No. 79, February 27, 1880, R. A. W," and read by Mr. Mitchell as follows:)

"Phila., Mch. 1st 187—

Received at 9.02.

To D. P. Holloway & Co.

Wait till you hear from us before recording Stark's assignment.

The Hale & Kilburn Manufacturing Company.

10, Pd. Wm. O.

This telegram has just been received at the office in Post Office Department, Washington, D. C."

(The offer of the telegram in evidence objected to by Mr. Otterson, particularly to the addenda, after the signature,

because all that Mr. Mitchell read after that is from a printed blank on which the dispatch is written, and especially the words "Post Office Department, Washington, D. C.," being in purple ink.)

By Mr. Mitchell.

Q. Please look at these letters and papers which I show you (a number of papers shown the witness), and say where they came from, and where you found them?

A. Those all came from our office.

Q. From the same file of papers?

A. Yes, sir.

(The letters shown the witness were then offered in evidence by Mr. Mitchell, being read by him, as appears in the testimony below; the letters respectively being objected to by Mr. Otterson.)

The first letter read by Mr. Mitchell was as follows:

"Philadelphia, March 15, 1878.

Mr. R. Mason,

Dear Sir:

We send you by express the model; which please look at and see if it will be of any service to us. You will see we have covered up the pillow-place with an apron which is self-operating and costing scarcely anything to put there, the brackets we have tapered off a little at the corners. The question may arise with you, why do we put it there, which we answer thus: We put it there to prevent pillows, or anything else being put in that space whereby the bed might be pulled down and burst the hinges or pull the rod out. We really have had this very thing happen probably fifty times and the consequence was we had to send a man to fix the bed. After you have examined it and if you do decide that it will be a benefit to us in the Everitt matter. If you will return the same to us we will hang it to a head-board and put it into a little better shape. On the other hand, if it is not going to be a benefit we do not care to do anything about it.

Yours in regard to Stevens is at hand. We shall engage to fix the matter up with him. We have no desire to wrong him in the least.

Respectfully,

Hale & Kilburn Manufacturing Company."

H. S. Hale.

(The above letter, marked "No. 80, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"Philadelphia, March 4, 1878.

Mr. R. Mason,

Dear Sir:

Our royalty to Everitt becomes due on the 10th instant. What do you think about notifying us that we infringe on Stark, so we can have an excuse for postponing the payment of said royalty, you may think best about notifying Everitt also. We judge the patent will be issued on Tuesday, 9th instant. Can you fix it so we will get word, say not later than 10th. We have always paid his royalty very prompt, and of course we are anxious to have it cease soon as possible.

Very truly yours,

Hale & Kilburn Manufacturing Company."

(The above letter, marked "No. 81, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"Philadelphia, 3—11—1878.

Mr. R. Mason,

Dear Sir:

Do you expect to be in Philadelphia soon; if so, would like to see you and show you a model wherein we have covered up the space which Everitt claims for pillows, &c., at a cost less than twenty-five cents. If you desire, we will send the model by express to you.

Very truly,

The Hale & Kilburn Manufacturing Company,

Per H. S. Hale."

Mr. Stevens has severed his connection with us this day.

(The above letter, marked "No. 82, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"Philadelphia, April 8, 1879.

Col. R. Mason,

Dear Sir:

Will you be kind enough to mail us the Stark reissue patent and oblige,

Very truly yours,

Hale & Kilburn Manufacturing Company

H. S. H."

(The above letter, marked "No. 83, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"Philadelphia, April 11, 1878.

Mr. R. Mason,

Washington, D. C.,

Dear Sir:

Yours of the 10th inst. is at hand, and in reply would respectfully ask you for a copy of Stark's patent (the re-issue) that we may examine the same in reference to the infringement claimed by your client against us.

Respectfully,

Hale & Kilburn Manufacturing Company,

H. S. Hale, Treas."

(The above letter, marked "No. 84, February 27, 1880, R. A. W.")

The next letter, read by Mr. Mitchell, was as follows:

"Philadelphia, —— 187

Dear Sir: We presented your letter to Mr. Everitt to-day, and per his request we write you for a copy of the re-issue. You might answer stating when it will be out, and that you will forward a copy next week; we will show your answer

to him and that will keep him quiet until the re-issue comes to hand. We will inform you if anything new turns up in the meantime.

Yours, etc.,
H. S. Hale."

(The above letter marked "No. 85, February 27, 1880 R. A. W.")

The next letter read by Mr. Mitchell was as follows:

"Dear Sir: We received the copy of re-issue this A. M., and notice that the signatures of two of our clerks are on it as witnesses. Does this not look bad to show to Everitt, as he knows both of them. Is there any way to change it. We do not suppose there is, but the mystery to us is, if Everitt notices their names, which he will, what can we say to him as a reason why those names appear on the re-issue. Please let us hear from you before we show it to Everitt.

Very truly,
H. & K. Mfg. Co."

(The above letter marked "No. 86, February 27, 1880. R. A. W.")

The next letter read by Mr. Mitchell was as follows·

"Philadelphia, June 18, 1878.

Col. R. Mason,

Dear Sir: We wrote you on 7th inst·, at the Gilsey House as requested, but have not heard from you yet. Will you write us on receipt of this in regard to the Everitt matter.

We wish you would look the records over and see if Letters Patent No. 41,986, dated March 22, 1864, and granted to Zebina E. Fobes for improved washstands is still owned by him, if not, by whom? Also patent No. 56,876, August 7, 1866, to D. W. Bashore for washstand and desk. We are unable to find either of these parties as yet.

How does the second re-issue of Lee's patent come on?

Yours, very truly,
Hale & Kilburn Manufacturing Company.
H. S. H."

(The above letter marked No. 87, February 27, 1880, R. A. W."

The next letter read by Mr. Mitchell was as follows:

"Philadelphia, July 1, 1878.

Col R. Mason.

Dear Sir: Didn't we understand you that Everitt claimed the open hinge? In looking over a copy of his patent we are unable to find such a claim. Will you be kind enough to inform us how you got that impression, and whether he does really claim it or not; if he does we will alter and use something else. Date of his patent March 24, 1874, No. 148,940.

Very truly yours,
Hale & Kilburn Manufacturing Co.
H. S. H."

(The above letter marked "No. 88, February 27, 1880, R. A. W.")

The next letter read by Mr. Mitchell, was as follows:

"Philadelphia, July 8, 1878.

Colonel R. Mason, Washington, D. C.

Dear Sir: Our attorney, Judge Otterson, says he won't send to the Circuit Court of the United States after the bill, that we understood you were to furnish a copy. Of course, hedon't know the whole story, and hence his refusal. Now, hadn't you better write to the Clerk to either serve it upon us in the usual way, or have him send it to James Otterson, No. 705 Sansom street. You see he thinks it is not our business to run after our own bills. We think best not to let him into the secret as yet. He understands it in this wise: that we are willing to pay seven per cent. royalty, no matter to whom we pay it. We paid the $6.15 to the Clerk all right.

Townsend telegraphed us to-day. We wrote him as stated in your letter.

Very truly yours,
H. S. Hale, Treasurer."

(The above letter marked "No. 89, February 27, 1880, R. A. W.")

Q. I now call your attention to three other letters. (Three

letters shown witness.) Is the first letter which I have shown you one of the same batch of letters, and from the same place?

A. I think it is.

Mr. Mitchell then offered in evidence, and read the letter, as follows:

"Philadelphia, April 1, 1878.

Messrs. D. P. Holloway & Co.

Gents: Yours stating that Stark's re-issue has been allowed is at hand. We enclose you a circular of a bed made in Boston, the foot-board of which forms the top cornice, and if it infringes on Stark's we would like to have you notify Mr. A. G. Frye, 36 Washington street, Boston, that such is the case. Mr. Mark Crosby is the inventor. Patented April 10, 1877. He sold his entire interest to Frye. Frye has just sold New York State to DeGraff & Taylor, in Fourteenth street, below Sixth avenue, New York City. And hadn't this party also better have a notice. This bed seems to come nearer our bed than any we now know of, and hence the importance of stopping it if it is a clear case. Of course you would notify them in Stark's name, would you not? You know the assignment has not been recorded yet, and we had jnst as soon it would be done in his name as not. Of course, you know best what to do and what kind of a letter to write.

Very truly,
Hale & Kilburn Manufacturing Company."

(The above letter, marked "No. 90, February 27, 1880, R. A. W.")

(The objection of Mr. Otterson to the introduction of the letters in evidence renewed as to this particular letter.)

Q. I also show you two other letters and ask you in whose handwriting they are?

A. They are in the handwriting of Colonel Rodney Mason.

Mr. Mitchell then offered in evidence and read the letters, as follows—each of the letters being objected to by Mr. Otterson:

"514 Ninth street, Washington, D. C.,
May 8, 1878.

DeGraff & Taylor,

Fourteenth street, below Sixth avenue, New York, N. Y.

Gentlemen: I forward herewith Patent Office copy of re issued letters patent to Andrew Stark on wardrobe bedstead, to which I invite your attention.

I am informed that you are infringing this patent, and my instructions are to institute proceedings against all infringers who persist in manufacturing. I shall be glad to learn that you have concluded to desist from manufacturing; otherwise I ask you to refer me to your attorney.

Very respectfully yours,

R. Mason."

(The above letter, marked "No. 91, February 27, 1880, R. A. W.")

"514 9th St., Washington, D. C., May 8, 1878.

A. G. Frye,

36 Washington St., Boston, Mass.

Dear Sir:

I forward herewith Patent Office copy of the re issued letters patent to Andrew Stark on wardrobe bedstead, to which I invite your attention.

I am informed that you are infringing this patent and my instructions are to institute proceedings against all infringers who persist in manufacturing. I shall be glad to learn that you have concluded to desist from manufacturing, otherwise ask you to refer me to your attorney.

Very respectfully yours,

R. Mason."

(The above letter marked "No. 92, February 27th., 1880, R. A. W.")

Q. I show you another letter (letter shown witness) do you know where it came from?

A. It is from the same collection of letters; from our office file.

The letter offered in evidence by Mr. Mitchell, under objection by Mr. Otterson, and read by Mr. Mitchell as follows:

"Philadelphia, February 23d, 1878.

Mr. R. Mason,
Dear Sir;

Mr. Stark says his foot-board does not turn the corner like Everitt's except that it don't form much of a place for pillows. Have you seen his model? Perhaps it would be well to take a look at it.

Yours, &c.,
The Hale & Kilburn Manufacturing Company;
Per H. Hale, Treasurer."

(The above letter marked "No. 93, February 27th, 1880, R. A. W.")

Henry S. Hale, recalled and cross-examined.

(The examination objected to by Mr. Otterson.)

By Mr. Mitchell.

Q. Did you write and send that letter (exhibit No. 92 shown witness)?

A. Yes, sir; I wrote that letter.

Q. Did you write and send these letters (exhibits 91 and 93 shown witness).

A. I wrote those letters.

Q. Did you send all the other letters which bear your signature?

A. I wrote those letters; but I did not send them.

Q. They are all in your handwriting. are they not?

A. I wrote them, and I gave them to our clerk to mail, and I suppose he sent them.

By Mr. Otterson.

Q. You were in correspondence, then, with your private counsel, Mr. Mason, were you not?

A. Yes, sir.

Q. And no one else?

A. That is all; he was so employed.

Examination of David P. Holloway resumed.

By Mr. Mitchell.

Q. Did you, yourself, have anything to do with the management of the patents for folding beds of the Hale & Kilburn Company

A. No, sir.

Q. Who came down to Washington, besides the members of the firm to see about this business?

A. Mr. Stevens and Mr. Kilburn were there at one time.

Q. Do you see Mr. Stevens here?

A. Yes, sir.

Q. The same Stevens that was there (referring to Mr. Asher B. Stevens, the witness previously sworn in this case)?

A. Yes, sir.

Q. Was Mr. Stevens down more than once?

A. Frequently.

Q. On this business?

A. I think he was there several times in regard to lounge business, and was there in regard to business of his own, a chair, and other things of that kind.

Q. Do you know in whose employ Mr. Stevens was, at the time?

A. I do not know.

Q. Do you know in whose interest he came?

A. In the interest of the Hale & Kilburn Company.

Q. He came, then, to see what had been done in the interest of Hale, Kilburn & Company?

A. Yes, sir.

Q. You said "lounge," a moment ago—did you mean lounge?

A. I meant a bed lounge.

Q. What is called a bed ?

A. Yes, sir; a wardrobe bed.

By Mr. Bowman.

Q. Do you remember who came to Washington to see your firm, first, in reference to this matter of Everitt's bedstead, as connected with Stark and his appearance ?

A. I think Mr. Stevens.

Q. Do you remember whether Mr. Mason was at home on that occasion ?

A. I cannot say whether that was the special time that he was not there. I know Mr. Stevens was there at one time when Mr. Mason was not there.

Q. Do you remember where Mr. Mason was at that time ?

A. At New York.

Q. Do you remember whether, or not, you telegraphed to Mr. Mason ?

(Objected to by Mr Otterson as incompetent.)

A. I do.

Q. Did you telegraph him at New York ?

A. I did.

Q. Did you, by telegram, notify him to stop, on his way back in Philadelphia, and see the defendants ?

(Objected to by Mr. Otterson as incompetent.)

A. I did.

Q. Did he stop on his return, and did he see them ?

(Objected to by Mr. Otterson as incompetent.)

A. He told me, on his return, that he did.

Q. Do you remember the assignment of the Stark patent to the defendants?

A. I do.

Q. Will you be kind enough to state who brought that paper to your office in Washington ?

A. I cannot say that I can answer that question. It came to my table, as I attended to that part of the business. I read the assignment.

Q. But you do not now remember who brought it there?

A. No, sir.

Q. When did you first see it?

A. I cannot give the date; my recollection is confined to the discovery of the Stark patent, and the disposition to purchase it; and I understood they did finally purchase it, and the assignment was sent there for record, and it was put in my drawer with a view of sending it to the Patent Office to record.

Q. Do you remember Mr. Kilburn, Mr. Stark and Mr. Stevens visiting your office together, in Washington, with reference to the Stark business?

A. I do.

Q. Can you state how many times they were there together in reference to the Stark business?

A. I can only recollect on one occasion.

Q. Do you recollect anything about the instructions in reference to changing the application for the re-issue of the Stark patent?

(Objected to by Mr. Otterson).

A. My understanding was that the reason it was changed was because he had sold some counties in Missouri, and could not assign the entire interest, whereby Hale, Kilburn & Co. would be entitled to the issue.

Q. Who attended to that part of it; who attended to the preparation of the papers for the reissue?

A. Colonel Mason.

Q. Do you know what became of that assignment?

A. I think it was destroyed.

Q. In what way?

A. I cannot say.

Q. Do you know anything about the arrangement to notify the defendants that they were infringing upon Stark's patent?

A. I do not, except by correspondence.

Q. Correspondence with whom?

A. Hale, Kilburn & Co.

Q. Is that correspondence here?

A. I do not know that it is.

Q. Will you state what that arrangement was?

(Objected to by Mr. Otterson.)

A. My impression is simply that he was authorized to give notice of the infringement.

Q. Who—that Mason was?

A. Yes, sir.

Q. That Mason was authorized to give notice of the infringement?

A. Yes, sir.

Q. Who authorized him to give notice of that infringement?

A. I infer, from correspondence, that it was Hale, Kilburn & Co.

Q. Was this after they had bought the Stark patent?

A. I think so. I do not know when they bought it, but I presume that was the fact.

Q. Do you remember as to whether the assignment and specifications of the Stark patent and reissue were sent on to the defendants in Philadelphia to be executed by them?

A. In the Stark patent?

Q. Yes, sir.

A. I think they were.

Q. Who brought those to you, after they were executed?

A. I cannot say.

Q. If you were to see a letter, would that refresh your recollection on the subject?

A. It might; I do not know.

Q. Was the letter dated February 28, 1878, written by Mr Harry S. Hale, received by you?

A. I presume it was. It was taken from our file.

Q. That letter says, "Mr. Stark left for Washington last night, and took with him Stark's papers and check?"

A. I do not recollect whether he brought them or not. It is probably so; but I do not know whether he did or not.

Q. But the letter states what is probably so?

Q. And this letter you received from the defendants?

A. I presume it came from them.

Q. Look at this letter (Exhibit No. 77 shown witness), and state whether or not it was received from the defendants?

A. It was; I recollect that very well.

Q. "Messrs. D. P. Holloway & Company,

514 Ninth street, Washington, D. C.

Gentlemen:—Enclosed please find our check for $80 for fees in Stark's reissue case. We also return herewith all the papers signed, as requested, together with the original patents and the assignment to be recorded.

Do you remember who brought you this letter, and the papers accompanying it, named therein?

A. I do not.

Q. Did you receive any of the papers connecte l with the assignment of the Stark patent, and the reissue, from anyone excepting Mr. Stevens?

A. Never had any other communication with any other person but Mr. Stevens in that business.

Q. And what papers you received through the hands of any one you received from him?

A. I think, beyond all doubt, they were.

Q. Do you remember Mr. Stevens having the models showing improvements which he had gotten up on folding beds, at your office in Washington?

A. I do.

Q. Do you remember about what time that was?

A. No; I cannot fix dates, only by correspondence

Q. Was it about the time of the negotiation connected with the Stark business?

A. The spring of 1878.

Q. Do you remember getting Mr. Mason to stop at the defendant's place, to examine Mr. Stevens' models?

(Objected to by Mr. Otterson.)

Q. On Mr. Mason's return from New York to Washington, do you remember getting him to stop over here, in Philadelphia, to go to defennant's place of business, and examine Mr. Stevens' models?

A. That was my object in telegraphing him, to stop—to see the models of Mr. Stevens.

Q. And after the examination of them by Mr. Mason, at the defendant's place of business, they were examined by you in Washington?

A. They were then, afterward; yes, sir.

Cross-examined.

By Mr. Otterson.

Q. Are you and Mr. Mason still in business together?

A. He has left my office; but he is my partner, until the Court decides him otherwise.

Q. Do you mean to say there is litigation pending between you, in reference to your partnership?

A. I mean to say that I have an injunction against him to restrain him from collecting any money, or disposing of any assets of the firm.

Q. Then I infer that—am I correct—there is no happy state of feeling between Col. Mason and yourself?

A. No special unpleasant feeling.

Q. No specially pleasant feeling, either, I suppose?

A. My relations with Col. Mason have been very pleasant, personally.

Q. And remain so to this time?

A. Well, I have not a very high appreciation of the gentleman's honesty.

Q. Notwithstanding that, you have the kindest feeling toward him?

A. Well, personally, I have no unkind feelings. Perhaps my temperament is different from some other men. I can forgive and look over many things.

Q. Even dishonesty?

A. Well, when a man's habits are such as to make an excuse for him, perhaps even my charity might go to that.

Q. What do you mean by that?

A. I mean by that, that a man's inordinate extravagance may lead him to do a thing that he would not do under other circumstances. There are many things in which a man—without making a personal allusion to Colonel Mason—when he has a peculiar temperament, indulges in to great extravagance; and there is, perhaps, some excuse, because it is the nature of the man to do so. I might excuse him in the same way that, if a man drinks whiskey, I would allow some apology to be made for a man doing something, when I knew that he had been drinking whiskey.

Q. Do not forget that you are a witness, and that whatever you say goes upon record?

A. Those are my opinions; and I shall proclaim them before the world, or anywhere else.

Mr. Bowman (to Mr. Otterson): You should remember that he has not volunteered his opinions, but has answered your questions?

Mr. Otterson.—The witness does not require your assistance now.

The Witness.—I have nothing to conceal.

By Mr. Otterson.

Q. How long is it since you separated from Colonel Mason, under these happy, or unhappy, circumstances?

A. I think Colonel Mason left our office in October last.

Q. What do you mean by "Our office?"

A. Because he was my partner then, and is my partner now. There has been no dissolution of partnership between him and me, and will not be until the court adjudicates the matter and dissolves the partnership, because we have an application pending in court to dissolve partnership.

Q. The letters which have been produced here by you were letters which were received indifferently by yourself or your firm, or Mr. Mason, as the solicitors of the defendants, when you were there?

A. Nine-tenths of them were received by myself.

Q. I observe that they are addressed principally to Colonel Mason?

A. I did not open them, if they were so addressed on the outside. I do not know.

Q. I speak of the face of the letters as they appear here?

A If the majority were addressed to Colonel Mason on the outside, I did not open them; but the mail came to me, and I opened the letters addressed to the firm.

Q. But the letters which you have produced here are letters which have been received by Col. Mason individually while you were together, and received by the firm while you were together and acting as the solicitor for these defendants?

A. Yes, sir.

Q. They were left in the office when Colonel Mason withdrew?

A. Except those which he took away.

Q. Did he take away any on this business?

A. He did.

Q. Do you know what?

A. No; I do not know what, but he came to me and told me that he had.

Q. I object to that; I am not asking you what he told you?

A. Well, I saw him take some papers out of the file.

Q. You do not know what they referred to?

A. Only what he said.

Q. I do not want what he said. We will call him if we want to know what he said?

A. That is all I know.

Q. What was the paper which had been placed in your drawer for the purpose of being recorded, which you speak of as an assignment of the Stark patent, and how did it get there?

A. It was an assignment of the Stark patent to Hale, Kilburn & Co., to the best of my recollection, placed in my drawer, to be recorded in the Patent Office. Whether Col. Mason handed it to me, or whether Mr. Stevens did, I cannot say.

Q. Do you know who prepared it?

A. I do not know; I cannot recollect.

Q. Was it not the paper which had been prepared in the office by Col. Mason, and sent here for execution?

A. I cannot say whether it was or not.

Q. It was not the paper which was afterwards destroyed?

A. I understood it was. I understood the first assignment was destroyed.

Q. I want to know whether this was the paper which was destroyed, or not?

A. I cannot say how it was destroyed. I simply know it was destroyed.

Q. And that was the paper which was put in your drawer?

A. Yes, sir.

Q. Who put it there; do you know?

A. I put it there myself, to answer your direct question; but whether it was handed me by Col. Mason or by Mr. Stevens I cannot say.

Q. Do you mean to say that that paper that was destroyed was an assignment, or was a contract for the Stark patent?

A. I understood it was an assignment.

Q. Did you examine it, at all?

A. My impression is that I did.

Q. Did you speak of it, with reference to the examination you made of it, as an assignment?

A. I believe it was.

Q. That is not what I asked you; please answer my question.

A. My reason for that is—

Q. I do not want your reason; please answer my question.

A. Well, ask your question again.

Q. Was the paper you speak of the assignment of the Stark patent, or a contract for an assignment?

A. I believe it was an assignment.

Q. Why do you believe it was an assignment?

A. Because I was assured it was one.

Q. Then your belief is not based upon a personal examination of it?

A. I would not say that I read the assignment through and through.

Q. Then, when you say it was an assignment, all you know is that you were told it was an assignment?

A. No, sir; not that. Because we were about to apply for a re-issue of the Stark patent, and I prepared the petition and the oath. The petition was handed to me to be recorded in accordance with this application for a re-issue, and it is scarcely probable that I would offer the contract for an assignment, and, at the same time, make an application for a re-issue. Is that intelligent?

Q. No, sir; not at all.

A. Well, it may not be to you.

Q. It may not be to me?

A. I only mean this, that a man who is not acquainted with the technicalities of the office——

Q. I understand what you mean. I only say it is not intelligible.

A. It may not be, but that is the fact.

Q. Where was the assignment, which was ultimately recorded, prepared?

A. I cannot say.

Q. You know there was a subsequent assignment prepared?

A. I think there was.

Q. And sent to Philadelphia for execution?

A. Either that—

Q. Or, was executed in your office in Washington?

A. I cannot say which.

Q. And was placed on record?

A. I will not even say that.

Q. Or was left in Mr. Mason's hands, in escrow?

A. I do not know that.

Q. Were you brought into familiar contact with the parties themselves during this business, or was Mr. Mason the party who treated with them?

A. With Hale, Kilburn & Co., he attended to all their correspondence, and prepared their cases.

Q. In their personal business were you brought in contact with them?

A. Very seldom; I simply recollect Mr. Kilburn.

Q. And you remember Mr. Stevens being there but once in his company?

A. But once in his company; one day. But he was there frequently upon his own private business. He was there two or three times on this other business—I intended to say, in the first place, that he was there several times in connection with this Hale & Kilburn matter. The re-issue of the Lee patent and the Stark patent brought him there several times.

Q. You remember that the Lee patent was for a chair. Do you not?

A. I think it was.

Q. That was a matter purely between Mr. Kilburn and Mr. Stevens?

A. I Do not know anything about their relations. I sup-

pose it was an arrangement with the Hale & Kilburn Company.

Q. But that was a matter about a chair, and not about a bed?

A. Yes, sir.

Re-examined.

By Mr. Bowman.

Q. I omitted to ask you if you remember visiting the Patent Department with Mr. Everitt and examining the papers for the re-issue of the Stark patent.

A. I do.

Q. Will you state whether, or not, there is apparent upon the face of those papers a change in the handwriting?

(Objected to by Mr. Otterson.)

A. The petition and oath is in my handwriting, interlined by Col. Mason. The specification is in Mr. Mason's handwriting.

Q. In whose handwriting was the first petition—I mean the first pages?

A. Mine.

Q. And the latter pages?

A. Colonel Mason's.

Q. Do you know in whose handwriting the papers were originally?

A. Do you mean the specification?

Q. Yes, sir.

A. Colonel Mason's.

Q. And the other?

A. The same.

Q. In Colonel Mason's?

A. Yes, sir.

Q. After they had been executed and witnessed, was the fore part taken off and changed?

(Objected to by Mr. Otterson.)

A. I will say that the uniform practice is to put the petition and the power of attorney on the first page, in front, and the oath afterward. In this case the oath and petition are on the same piece of paper, and put entirely in front—a thing that I never saw done before.

Q. Do you know who did that?

A. No, sir.

Q. Look at this book (a letter-press copy book shown witness), and tell me what it is?

A. It is a letter-book of the firm of D. P. Holloway & Co.

Q. I direct your attention to the letter dated Washington, D. C., March 4, 1878. Who wrote that letter?

(Objected to by Mr. Otterson.)

A. Colonel Mason wrote it, and his name is signed to it.

Q. What was done with the original letter?

A. I can only say that it was sent to Hale & Kilburn.

Mr. Bowman.—I now call upon Mr. Otterson to produce the original letter, of which the letter-press before me is a copy.

Mr. Otterson.—I have not the slightest idea of what letter is before the counsel, and I have had no notice of any call, up to this moment, to produce the original.

Mr. Bowman.—Then I will read this letter:

"Hale & Kilburn Manufacturing Company.

Gentlemen: Your case has been suspended as directed. I think the best course would be to return the assignment to Stark, and have him execute the application for re-issue, as the sole owner, and then make an assignment with subsequent date. This need not be recorded immediately, and, in the meantime, he having attained his re-issue, should call on you for settlement, and you call on Everitt to make his title

good, or release you from royalty, or make a fair reduction of same.

Yours truly,

R. Mason."

By Mr. Bowman.

Q. I direct your attention to another letter in the same book, dated February 28, 1878—in whose handwriting is that?

A. It is Colonel Mason's.

Q. What was done with the original letter?

A. I presume it was sent to Hale, Kilburn & Co.

Mr. Bowman.—I call on Mr. Otterson to produce the original letter, of which the letter-press before me is a copy.

Mr. Otterson.—This is all irregular, because I take it that if Mr. Bowman had intended to put in this matter to-day, he should have put it in before handing the witness over to me for cross-examination. It is no rebuttal at all and is no re-examination, but is entirely new matter.

Mr. Bowman.—My answer to that is that these letters were just brought to my attention during the course of the examination, and I regard them as directly in rebuttal of all the material evidence of the defendants. I will read this letter:

"Washington, D. C., February 28, 1878.

Hale & Kilburn Manufacturing Company,

Gentlemen: The re-issue of the Stark patent does not affect the validity of the claims of the Everitt patent, while it dominates the structure described in the latter patent, which is for features not described in Stark's; while, as it also includes things covered by Stark, it is an infringement. This is a very common condition of affairs, when improvements are made on an older patented machine. The owners of the original can not use the improvements without license, and, on the other hand, the owners of the improve-

ments have right to build according to the original designs. It is very clear that you cannot continue to use the Everitt improvements without liability under your contract. When it is found, in any suit, that you are infringing any prior patent, the contract gives you the option to recovery to Everitt, and through that be released from liability under the contract; but, if you continue to use his devices as patented you would be liable as other infringers are. While, therefore, you use his devices, you must pay. You may, however, discontinue the use, and I do not see that the contract gives Everitt any remedy. You seem, however, to have made yourself liable if you use your own inventions covered by patents taken out by one of the parties. If you can dispense with both the Kilburn counter weight, and whatever else may be covered by your patents, and also the two features covered by Everitt, you are free to do so, and without license.

Yours truly,

R. Mason.

P. S. It appears to me that the model introduceed to my motice by Mr. Stevens will avoid all question of infringement of Everitt. It does not include a movable bed bottom, which is the essential element of the first claim, and it does not have the side bracket extended above the side rails to form a receptical for the pillows, on which the second claim depends. As I understand, it also renders the peculiar arrangement of the counter-weights patented by your Mr. Kilburn unnecessary, and enables you to use the common counter weight, long before employed, and now public property.

Yours,

R. M.

Adjourned until Wednesday next, March 3, 1880, at 3 P.M

Philadelphia, March 8th, 1880.

Parties met at the office of the Master. Present, the Master, Mr. Bowman, Mr. Everitt, Mr. Otterson, Mr. H. S. Hale.

E. E. Everitt recalled and examined.

By Mr. Bowman.

Q. Did you hear that Mr. Roberts, and Mr. Hale, one of the defendants, testified as to the rate of discount allowed special agents.

A. I did.

Q. Please state whether or not the rate of discount allowed to their special agents represents the wholesale prices?

A. It did not.

Q. State wherein they differ?

A. Those rates allowed special agents were such as those agents could sell to the trade—the furniture trade—and the price that they obtained from the trade was what they call their wholesale price, not the special rates to their agents and their own stores.

Q. In their settlements with you, what basis did the defendants take—the rates allowed to their special agents?

A. They did.

Q. Those rates were greater than what they allowed to the general or wholesale trade?

A. Yes, sir.

Q. Can you tell what difference there was in the rates?

A. They varied. The rates between the wholesale trade price and the price they sold to special agents varied from fifteen to twenty, or twenty-five per cent.; I guess as much as that.

Q. In what way?

A. The discount to the special agents in their own stores was more than they allowed to the trade. As a rule, during the last three years, they allowed to the special agents as high as thirty-three and a third off; and to the trade they allowed ten off, in this city. I discovered two instances in Ohio where ten off was allowed; one at Cleveland, and the other in Cincinnati. Then, to the trade in other places, I noticed we found some twenty off to the trade—their books show it. At the same time, they were allowing special

agents thirty-three and a third, and in one instance more than that—that is one agent.

Q. You also heard what the defendants testified to, with reference to the royalty received from the Pennsylvania Railroad Company. They stated, I believe, that they received no royalty from that Company, but sold them your patented bed—have you examined the books of the defendants on that subject?

A. I have. That is not so. They did receive royalty.

Q. What do the books show on that point?

(Ojected to by Mr. Otterson, because the books are in evidence.)

A. The books show that they did receive a royalty. If you will allow me to look at a memorandum, I will refer to the entry, the page and the date.

(Objected to by Mr. Otterson.)

(Referring to memorandum.) Sales book B, page 234, December 14, 1875, springs and fittings for one champion folding bed, including royalty, car No. 60, $35. Those springs and fittings were $7.50, which they charged me for, and the balance was for royalty. In the same entry, royalty on bed now in use in car No. 180, $25; that was charged alone for the royalty. Sales book S, page 191, January 13, 1875, entry of one set of castings and springs for folding bedstead, including royalty, to use same in special car No. 50, $50. Those springs and fittings for those bedsteads were not spring bottoms. They were springs to use in the place of weights to counterbalance the bed. It is merely the fittings, so that they could build the bedsteads themselves, and put it in the car. They charged me $7.50 for the same things—I thought it was a very good price for them—and the balance was for royalty for the use of them.

Q. In the settlements made with you by the defendants for

royalty, what would they take as their basis in allowing you royalty upon goods sent to their branch store?

A. They would take the prices that the goods were sold for here, as a rule, in this city, and not what the goods were sold for in New York.

Q. Would they enter in their books certain prices for the goods sent to their branch stores?

(Objected to by Mr. Otterson.)

A. Yes, sir.

Q. State whether or not they would take those prices as their basis of settlement with you for royalty?

A. As a rule, I believe they did. There may be instances where they did not, but they did not settle with me for what the goods sold for in Mew York.

Q. Have you examined the return sheets, which the defendants produce here, and which they say represent the *prices received for the goods* by their branch stores in New York?

A. I did, very carefully.

Q. What do those return sheets show, as to the prices received for the goods, compared with what they are charged at in the defendants' books, and upon which, at least in their books, they settled with you?

(Objected to by Mr. Otterson.)

A. More than two-thirds of the goods sold in the New York store were sold for more money than they were entered in their sales books here for.

Q. How about the other stores?

A. I did not pay the attention to the other stores that I did to the New York store. I went over that very carefully. I found, as a rule, the goods were sold there at higher rates than they were sold here for, or that they were entered into their sales books for.

Q. Did you ever get any royalty on that difference in price

between what the goods were charged in their books here for, and what they were sold for in New York?

A. Never. I forgot to state about those cars. I never received any royalty for the sales of those fittings to the Pennsylvania Railroad Company. Neither did I receive half of the license fee that they had sold the rights for—the rights to use in those special cars—which I was entitled to under my contract.

Q. You also heard what Mr. Hale testified to about the carpet in the store, that he had bought this carpet?

A. I was not with him when he bought it, neither did I go to look at it with him. I am positive about that.

Q. You heard what Mr. Roberts testified to about his offering to show you the books of the defendants, after they had refused to let you see them; state whether he was correct about that or not.

A. He never did to my knowledge—never.

Q. Never what?

A. Offered to let me see the goods. Neither did he tell me that Mr. Kilburn offered to let me see them. I never asked for the books after I was refused.

Q. I believe you want to make a correction as to your testimony in relation to the Tobey Furniture Company?

A. I think I must be mistaken with regard to saying that there was only two charges at rates larger than thirty-three and a third off. The books being away, I got it confused in my head, and I must be wrong about it. However, the books will show for themselves.

Q. (Advertisement of the Hale & Kilburn Manufacturing Company, on page 31, of "the American Cabinet Maker," of March 6, 1880, shown witness.) Where did you get that publication?

A. I received this at a furnishing store in Market street.

Q. Whose advertisement is that on page 31?

A. The Hale & Kilburn Manufacturing Company's advertisement.

(Paper offered in evidence by Mr. Bowman, and marked "No. 94, March 8th, 1880, E. H. D.")

Q. Have you heard what was said about your contract with these defendants, and their statement as to their considering the matter a swindle; state how that was prepared, and who procured it, and all about it?

A. They had it prepared themselves, they employed their own attorney to do it, and would not allow me to have anything to do with it. They would not trust to my lawyer to do it, but they employed Mr. Howson to do it.

Q. Did they examine, through their counsel, your patent record?

A. Yes, sir; they had it there before them.

Q. And their counsel prepared the papers?

A. He did.

Cross-examined.

By Mr. Otterson.

Q. What was the house in Cleveland, to whom a sale was made of ten per cent. off?

A. The Herndon Furniture Company.

Q. Can you give the date of the sale?

A. I think I can. (Referring to a memorandum.) September 26th, 1876.

Q. What was sold?

A. I have not got a memorandum of what was sold.

Q. Have you the amount?

A. No, sir; I have not got the amount neither, but I recollect very distinctly Mr. Roberts being examined on that very bedstead.

Q. Who was the sale to in Cincinnati?

A. Mitchell and Rommelsburg.

Q. What was the date of that sale?

A. November 29, 1876.

Q. Do you know what that sale was?

A. I cannot tell you what that sale was, but the amount of the bill was $326.50.

Q. Do you know whether or not that ten per cent. off was the regular rate to the trade, at that time?

A. I know it was here, and that I sold goods at that rate off myself, as a special agent.

Q. Do not you know that that was the regular rate of discount?

A. Ten per cent. off?

Q. Yes, sir.

A. It was to the trade, as far as I knew.

Q. But I understood you as alluding to these as exceptional cases of injustice, because ten per cent. off was allowed?

A. There was, I stated, twenty per cent. off allowed some outside dealers and their special agents.

Q. At the time of these sales?

A. I will not be positive about that.

Q. Do you mean that these sales in Cleveland and Cincinnati, to which you have referred, were exceptional, because of the low rate of discount that was allowed off?

A. I know that they allowed it to the trade in this city.

Q. Why do you select these two sales in Cleveland and Cincinnati for purposes of remark in your testimony?

A. Because I saw them in the book.

A. What is there remarkable about them. How do they differ from other sales to other houses at the same time?

A. They say, in their testimony, that they sold to the trade outside for a higher rate of discount than that, and I want to show that they did not.

Q. You do not know what was sold—a single item, or a hundred items?

A. It does not matter about that.

Q. Answer my question—you do not know whether there was a single article sold, or a hundred, in either of the cases?

A. I do not know positively; no, sir.

Q. Tell us what became of the carpet after the closing of the Centennial Exhibition—did it not go to yon?

A. I traded my platform—

Q. Did not you get that carpet?

A. I did. I traded my platform for it.

Q. I thought the platform was put up by the Kilburn Company?

A. I agreed to pay for it, and did pay for it. Harry S. Hale, after the close of the Centennial Exhibition, at the opening of the Permanent Exhibition, wanted to use the platform in the Permanent Exhibition, and we made a trade; they took my platform, and I took their carpet.

Q. What became of the carpet that was charged to you—the whole of the carpet on the platform was not yours—I want to know whether the share of the carpet which was charged to you, was not taken by you after the Centennial closed, and whether you did not make your own use of it?

A. I did not positively. They took possession of it, and took it away and put it in their store.

Q. What became of it then?

A. It was there for a number of months.

Q. What became of it ultimately?

A. I traded the platform that I paid twenty-five dollars for, for the whole carpet that was on the stand.

Q. How many months was this after the Centennial Exhibition closed?

A. Two months, I suppose.

Mr. Bowman.—There was a call made on February 16, 1880, upon the defendants to produce their answer of April 10, 1878, to the letter of R. Mason to them; I also called on them at the same time to produce the answer of R. Mason to their letter of April 11, 1878, the answer being dated April 11, 1878; the copies were not offered in evidence, and I call for the original. At that time I offered another letter in evidence—not these. What I offered in evidence was a letter from the defendants to Mr. Everitt, dated October 9, 1877, with the envelope in which it was enclosed. We call

for the production of the original letter, for the purpose of offering them in evidence; and, with that exception, we close.

Mr. Otterson.—We close with the exception of a deposition, which we may hereafter offer in evidence.

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"	"	Cross-exd.,
"	R. M. Hunter,	Direct,
"	"	Cross-exd.,

Defts.,	R. M. Hunter,	Re-exd.,
Plffs.,	Asher B. Stevens,	Direct,
"	"	Cross-exd.,
"	"	Re-exd.,
"	Daniel Connolly,	Direct,
"	"	Cross-exd.,
"	"	Re-exd.,
Defts.,	"	Re-called,
"	"	Re-cross,
"	Samuel N. Newcomb,	Direct,
"	"	Cross-exd.,
"	Henry S. Folger,	Direct,
"	"	Cross-exd.,
"	R. Mason,	Direct,
"	"	Cross-exd.,
"	"	Re-exd.,
Plffs.,	Daniel W. McElroy,	Direct,
"	"	Cross-exd.,
"	"	Re-exd.,
"	Nathaniel R. Harris,	Direct,
"	Hugh McComb, Jr.,	Direct,
"	"	Cross-exd.,
"	"	Re-exd.,
"	David P. Holloway,	Direct,
"	"	Re-exd.,
"	"	Re-cross,
"	"	Re-exd.,

122-622
122-622

IN THE

Supreme Court of the United States.

Error to the Supreme Court of the State of Pennsylvania.

Henry S. Hale, Artemas Kilburn, J. Warren Hale, who survived H. W. Curtis, with whom they traded as Hale, Kilburn & Company and the Hale & Kilburn Manufacturing Company,
Plaintiffs in Error,

vs.

Elisha E. Everett,
Defendant in Error.

October Term,
1886.

Paper-Book for the Plaintiffs in Error.

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GEORGE HARDING,
GEORGE W. BIDDLE,
Of Counsel for the Plaintiffs in Error.

Allen, Lane & Scott, Printers, Nos. 229 and 231 South Fifth Street, Philadelphia.

Statement of the Case.

This is a writ of error to a decree of the Supreme Court of Pennsylvania affirming the decree of the Court of Common Pleas, No. 4, of the city of Philadelphia, in a suit in equity instituted by the defendant in error, Elisha E. Everitt.

The plaintiff, on March 24th, 1874, filed a bill in which he set out two separate grounds of complaint and prayed for two separate modes of relief. (Record, pages 12–17.)

First.—He set forth that on April 16th, 1874, he had made *a contract* between himself and the defendants, Hale and others, by which he assigned certain letters patent for improvements in wardrobe bedsteads to the defendants, who agreed to manufacture bedsteads under the said patents and pay him a royalty upon them at the rate of seven per cent. upon the wholesale prices received by them, and half the net profits derived from the sale of any licenses under the letters patent: That it was provided by the agreement that in case the defendants or their assignees should fail to account under its terms, and continue in default for sixty days after demand, they should forfeit all their interest in the letters patent and re-assign the same to the plaintiff; and further that if the patents should be found invalid, the defendants might surrender to the plaintiff all right under the agreement and be released from its covenants. (Record, page 16.)

The plaintiff then set out that the defendants and their assigns had manufactured bedsteads under this agreement and under the patents; that they had failed for sixty days to pay the royalty therein mentioned, whereby their right to the patent and the said improvements thereon had become forfeited, and that they had not re-assigned the patents under the

terms of the agreement. He then prayed *on this head* equitable relief as follows:— (Record, page 16.)

1. "That an account may be taken of all and every the bedsteads and "other furniture manufactured by the said defendants under the said pat- "ent and improvements after the date of the said agreement and of all "moneys realized from the sale of the same; and that they be directed "to pay to your orator what money upon such account shall appear to "be due from them to him.

2. "That the said defendants be ordered to re-assign to your orator the "said letters patent of your orator and the improvements thereon, and "all rights to use the said patented inventions under said agreement."

These allegations and prayers of the bill the defendants substantially admitted by the first paragraph of their answer, excepting that they denied that certain other and further patents which they had purchased or invented were "improvements" upon the plaintiff's patented invention under his agreement, and any obligation to assign these additional patents. They set forth that they had offered to re-assign the plaintiff's patent to him in person and through his attorney, but that it had not been accepted, and that they, under the advice of their counsel and in compliance with the second prayer of the bill, had deposited in the hands of the clerk of the court at the time of filing of their answer, a re-assignment of the patent referred to, so that the plaintiff should take his rights under it, and that the re-assignment was subject to his orders. (Record, pages 18, 19.)

Second.—The plaintiff also set forth in his bill the grant of his letters patent by the United States on the 24th of March, 1874, and also averred that the Hale & Kilburn Manufacturing Company, the defendants, had, ever since the assignment to them, been manufacturing bedsteads under the assignment and under Everitt's patent, and prayed in addition to the above-mentioned relief (Record, page 15.)

"That the said defendants be restrained by an injunction from your "Honorable Court * * * from making or selling bedsteads "or other furniture under your orators' said patent and the improvements "thereon" (Record, page 17);

and also "further relief."

As to *these averments* the defendants answered, in paragraphs 7 and 8 (Record, pages 19, 20),

That the plaintiff's patent was anticipated by a patent to Andrew Stark and another to Sebeus C. Maine, which covered the leading and only valuable features of the bedstead, and they averred that because of the existence of prior patents and for want of utility and novelty they were advised that the plaintiff's patent is utterly useless and worthless.

They set forth an account, annexed to their answer, of all folding bedsteads sold by them (Record, pages 21–25), but alleged that many of them specified in the accounts were

> "in no sense covered by the plaintiff's patent, and the payments, there-
> "fore, were made by mistake." (Record, page 18.)

and further that they were not now manufacturing any bedsteads under the plaintiff's patent, and did not propose to do so thereafter. (Record, page 20.)

It will thus be seen that the plaintiff's bill set up two entirely distinct grounds of relief.

First.—His *contract* with the defendants; their default under it; and a prayer for relief under it, viz., that they be required to account under its terms, and to re-assign unto the plaintiff his patent and the improvements thereon.

Secondly.—A prayer for protection against further *infringement* of the patent, by enjoining the defendants from manufacturing under it.

To the first head of relief prayed for, the defendants in their answer made substantially no objection; admitting as to the *contract* that they had forfeited their rights under it, and offering to pay; but alleging that the plaintiff's *patent* was useless and worthless because it *infringed* other patents, and they *denied* that most of the bedsteads already made by them *were covered by the patent* at all, and denied that they were manufacturing under it.

The cause was then heard upon bill and answer, whereupon the Court of Common Pleas made a decree (printed on page 25 of the Record), containing, amongst other things, the following language :—

"It is ordered, adjudged and decreed, that an account be taken of all "* * * bedsteads manufactured by the defendants under the "patent and improvements mentioned and referred to in the bill, after "the 16th of April, 1884; * * and it is further ordered that an "injunction issue directed to the said defendants (Hale & Kilburn) com- "manding and enjoining them * * from manufacturing bed- "steads and other furniture under the said patent, and from selling any "bedstead made under said patent and improvements, manufactured "after the date of this decree."

This was a final decree in the cause upon bill and answer, enjoining the defendants from manufacturing or selling under the plaintiff's patent in the future; referring the question of an account under the contract to a master, and further ordering the master to take testimony on all matters pending in the second prayer of the plaintiff's bill, that is, as to the reassignment of the improvements.

The defendants being advised that a State court had no jurisdiction to restrain them from manufacturing under letters patent, which they had expressly averred in their answer to be anticipated by prior patents, applied, after the further decree made in the cause on the coming in of the report of the master had been affirmed in the Supreme Court of Pennsylvania, for a writ of error to the Supreme Court of the United States, which was allowed by the Chief Justice of the State on February 7th, 1883. (Record, page 1).

This decree of the State court restraining the defendants from manufacturing under the plaintiff's patent, Letters Patent No. 148,940, form the subject of the first specification of error.

The plaintiff in his bill also averred that the contract between them provided

"that any *improvements* in said patented bedsteads which may be made "by either of the parties hereto, and any letters patent of the United "States obtained for *such improvements*, shall be held and enjoyed by "the said parties of the second part under and subject to the terms of "this agreement" (Record, page 14);

and that

"several *improvements* to said patented process have been, from time "to time, made by the said defendants or some of them, which are now

"held by the said Hale & Killburn Manufacturing Company;" (Record, page 15);

and prayed that the defendants be ordered to reassign the patents for all of the *improvements*. The defendants in their answer denied that the *improvements* made and patented by them were on any of the features covered by the said patent of the plaintiff; but,

"On the contrary they say that the said improvements are on other "parts not in any way connected with the claims of the plaintiff, and they "deny the right of the said plaintiff to claim a transfer for the said im- "provements." (Record, page 19.)

The record in this case shows that on September 24th, 1878, the plaintiff filed his bill praying, *inter alia*, for an assignment under the terms of his contract (which he declared terminated and forfeited on that day) of all improvements on his own patent made by the defendants; that on November 22d, 1878, the defendants filed their answer denying his right.

The plaintiff further prayed in his bill (Record, page 17.),

"III. That the said defendants be restrained by an injunction from "your Honorable Court from * * * making or selling bed- "steads or other furniture under your orator's said patent and the *im- "provements* thereon."

And in the decree made by the State court upon the bill and answer (Record, page 25,) the court decreed

"That an injunction issued directed to the said defendants command- "ing and enjoining them * * * from selling any bedstead "made under said patents and *improvements* manufactured after the "date of this decree."

So that on December 9th, 1878, the State court made a decree, on bill and answer, enjoining the defendants *from manufacturing or selling* any article *under the* defendants' *own improvements* thereon, their right to which the court had then never passed upon or even heard discussed.

These are the third and fourth grounds upon which the defendants have appealed to this court. (See specifications of error, Nos. 5, 6, 7, 8, 9, 11, 12, 13, and 14.

The plaintiff, in addition to the above two grounds of complaint, set forth a third and entirely distinct matter. He averred

that the defendants, Hale & Kilburn, had purchased for $1000 from one Stark a patent, issued long prior to the plaintiff's own patent, for an improvement in folding bedsteads; and that a suit on the former had been commenced in Stark's name against the defendants' use of the plaintiff's (Everitt's) patent in the Circuit Court of the United States, which, however, the plaintiff charged, was promoted by the defendants themselves and at their expense, and was therefore fraudulent. By an amendment to his bill he averred that the defendants had alleged in their answer that his patent infringed the Stark patent which they now owned; but that the relations between the defendants and himself, under his contract with them, were such, during its existence, that the latter could not acquire title to Stark's patent, or to any other, adversely to him. He therefore prayed that the defendants might be decreed to assign to him the Stark patent also, without compensation. (Record, page 26).

Stark's patent was prior to Everitt's, Stark's being dated August 22d, 1865, and Everitt's November 19th, 1873; the evidence showed that the defendants had agreed with Stark to purchase his patent; that they had had it reissued by the Patent Office (Reissue No. 8161, dated April 9th, 1878). *No evidence other than the patents themselves was given to show whether Everitt's patent was anticipated by it* or not. The court below decided that the defendants had in equity no right to reissue the Stark patent, or to buy it in its reissued form, because it constituted in some way a fraud upon Everitt. The contract between Everitt and the defendants had begun April 16th, 1874, and had been terminated by Everitt himself on September 24th, 1878. The court below not only decreed that the defendants account for all of the bedsteads manufactured by them, whether covered by Everitt's patent or not, during the whole period of that contract, but they decreed that after the contract had been terminated by Everitt himself, that he could in equity compel the defendants to assign to him, without compensation, the Stark patent also for the remainder of its existence. (Record, page 503).

It is difficult to state clearly the grounds upon which the

court below did this. From an analysis of their opinion, it would seem that they found, as a fact, that the Everitt patent was valid; that the Stark patent in its original form did not anticipate the Everitt patent; that the Stark patent in its reissued form did anticipate the Everitt patent, and therefore, as a matter of law, rendered the latter patent void; that the obtaining of the reissue of the Stark patent by the defendants, or by Stark at their instance, was therefore a fraud upon the plaintiff, so that, on the general ground that during the continuance of the contract relation between the parties, the defendants could not buy any outstanding title except for the benefit of both,—the plaintiff had, in some way, a title to the Stark patent. They carried out this principle by awarding the entire Stark patent to Everitt upon the termination of the contract by him. The language of the court on this subject is (see 39 Legal Intelligencer, page 158):—

"But, in the present case, the defendants (Hale and Kilburn) created "themselves the very title which is alleged to be hostile to the plaintiff's "rights, for without the reissue of the Stark patent which they obtained, "the plaintiff would have been in no danger. The plaintiff is entitled there- "fore to relief and protection against the defendants' fraudulent reissue "of the Stark patent. He might have it by a perpetual injunction against "the assignment or use of that patent, or he may have it, upon the prin- "ciples already adverted to, in the form of a decree for a compulsory "assignment of it to the plaintiff. The form of the relief is not very ma- "terial, for the result is the same in either case."

Specification of Errors.

1. The court below, the Supreme Court of Pennsylvania, erred in affirming the decree of the Court of Common Pleas ordering an injunction to issue against the appellants perpetually restraining them from infringing the patents which were decided to be the property of the appellees.

2. The court below, the Supreme Court of Pennsylvania, erred in affirming the decree of the Court of Common Pleas directing the appellants to account for, and pay under the terms of the contract, for bedsteads made and sold after the termination of the contract, and when the appellants were liable, if at all, as mere infringers of the patents owned by the appellees.

3. The court below, the Supreme Court of Pennsylvania, erred in not dismissing this case for want of jurisdiction. Because the pleadings show that there was no dispute between the parties as to the contract, and that the only question to be determined was whether or not certain patents were or were not for "improvements" on the invention patented by the appellee. A question arising solely under the patent law and therefore cognizable exclusively by the Federal courts.

4. The court below, the Supreme Court of Pennsylvania, erred in entertaining the jurisdiction of the cause, and in not dismissing said cause, because the validity of a patent was involved, and by Article I., Section 3, and by Article III., Section 2 of the Constitution of the United States, the determination of the validity of a patent is a case arising under the Constitution and laws of the United States, and exclusive jurisdiction to determine the same is vested in the Federal courts.

5. The Supreme Court of Pennsylvania, the court below, erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error, defendants below, "from manufacturing bedsteads and other furniture under said patent (No. 148,940), "and from selling any bedstead made under said patent and "improvements manufactured after the date of said decree, "December 8th, 1873."

6. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their said decree, viz., after the eighth day of December, 1878, under letters patent of the United States No. 159,908.

7. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their said decree, viz., after the eighth day of December, 1878, under letters patent of the United States No. 181,450.

8. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their decree, viz., after the eighth day of December, 1878, under letters patent of the United States No. 182,465.

9. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error from selling any bedstead manufactured after the date of their said decree, viz., after the eighth day of December, 1878, under letters patent of the United States No. 210,777.

10. The Supreme Court of Pennsylvania, the court below, erred in affirming the judgment of the Court of Common Pleas,

No. 4, of Philadelphia county, neither of said courts having jurisdiction of the cause, because the question of infringement of a patent was involved, and by Article I., Section 8, and by Article III., Section 2 of the Constitution of the United States the determination of the validity of such patent was a case arising under the Constitution and laws of the United States, and exclusive jurisdiction to determine the same was vested in the courts of the United States.

11. The court erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the said "patent (No. 159,908) or from making or selling bedsteads or "other furniture thereunder."

12. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the "said patent (No. 181,450) or from making or selling bed-"steads or other furniture thereunder."

13. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the "said patent (No. 182,465) or from making or selling bed-"steads or other furniture thereunder."

14. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree enjoining the plaintiffs in error "from disposing of the "said patent (No. 210,777) or from making or selling bed-"steads or other furniture thereunder."

15. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree ordering the plaintiffs in error to pay to the defendant in error *inter alia* $971.98, damages for infringement by the plaintiffs in error after September 24th, 1878, of the defendant in error's letters patent No. 148,940.

16. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county entering a decree that the plaintiffs in error, the defendants below, should account to the defendant in error for all bedsteads alleged to be covered by defendant in error's patent No. 148,940, made and sold by them after September 24th, 1878, on or before which day the agreement between the parties was determined.

17. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county finding as a fact and holding that the reissue of letters patent reissue No. 8161, on April 9th, 1878, to Andrew Stark so as to cover letters patent No. 148,940 which had been previously, viz., on the twenty-fourth day of March, 1878, issued to the defendant in error, Everitt, was fraudulent, or entitled said defendant in error to a decree for the compulsory assignment from the plaintiffs in error to him, without compensation, of the said reissued letters patent No. 8161.

18. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county because the point in controversy in the cause was whether the Everitt patent, No. 148,940, was void because anticipated by prior patents, and the decree affirmed the validity of said patent by enjoining the defendants from manufacturing and selling bedsteads thereunder; which point was one arising under the Constitution and laws of the United States, and the exclusive jurisdiction to determine the same was vested in the Federal courts.

19. The court below erred in affirming the judgment of the Court of Common Pleas of Philadelphia county because the judgment of the court denied and was against a right, title, privilege and immunity claimed by the plaintiffs in error under the Constitution of the United States, Article I., Section 3, providing amongst other things, that Congress shall have power to promote the progress of science and the useful arts by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries, and

under Article III., Section 2, of said Constitution providing that the judicial power of the United States shall extend to all cases in law and equity, arising under said Constitution, and under the statute laws of the United States referring to the said subject; namely, the right to manufacture articles although covered by letters patent of the United States No. 148,940, on the ground that said letters patent were void and of no effect because anticipated by other and prior patents, and further the right to hold and enjoy letters patent of the United States, reissue No. 8161 purchased by, assigned to and vested in the plaintiff in error, and to have their aforesaid right so to manufacture and hold and enjoy, determined exclusively by the Federal courts, all of which rights, titles, privileges and immunities were claimed by the plaintiffs in error; and the said Court of Common Pleas of Philadelphia and Supreme Court of Pennsylvania have and had no jurisdiction over the subject-matter of this controversy, but the jurisdiction is by the Constitution and statute laws of the United States vested exclusively and cognizable in the Federal courts, and therefore the said proceedings and judgment aforesaid are null and void, and contrary to the Constitution and statute law of the United States in the premises.

20. The court below erred in affirming the judgment of the Court of Common Pleas dismissing the exceptions of the plaintiffs in error to the master's report, and in not reversing the judgment of the Court of Common Pleas upon the exceptions of the plaintiffs in error to the master's report.

21. The court below erred in affirming the judgment of the Court of Common Pleas, which decreed that plaintiffs in error were indebted to the defendant in error in the sum of $6554 with interest from December, 1878, and which directed them to pay the same forthwith.

22. The court below erred in affirming the judgment of the Court of Common Pleas, which decreed and ordered that the plaintiffs in error should forthwith assign and deliver to the

defendant in error the letters patent for an improvement in folding bedsteads, numbered 148,940 and dated March 24th, 1874.

23. The court below erred in affirming the judgment of the Court of Common Pleas, which decreed and ordered that the plaintiffs in error should forthwith assign and deliver to the defendant in error the following letters patent, to wit:—

No. 159,908, granted February 16th, 1875, to H. W. Curtis;

No. 181,450, granted August 22d, 1876, to C. Kilburn;

No. 182,465, granted September 19th, 1876, to S. D. Newcomb;

No. 210,777, granted December 10th, 1878, to Henry S. Hale.

24. The court below erred in affirming the judgment of the Court of Common Pleas, which decreed and ordered that the plaintiffs in error should forthwith assign and deliver to the defendant in error the letters patent reissue No. 8161, reissued April 9th, 1878, to Andrew Stark.

25. The court below erred in affirming the judgment of the Court of Common Pleas, which decreed and directed that the costs of the cause be paid by the plaintiffs in error.

26. The court below erred in not reversing the judgment of the Court of Common Pleas, which was erroneous and wrong in every particular.

GEORGE W. BIDDLE,
For Plaintiffs in Error.

Argument.

FIRST.

The pleadings in this case directly raise the question of infringement: the issues being as to the anticipation or patentable novelty of the appellee's patent; and the relief prayed, an injunction against farther infringement, being appropriate solely to an infringement suit.

The plaintiff Everitt sets forth in paragraph first of his bill that letters patent were granted to him as above, for an alleged new and useful improvement in wardrobe bedsteads. (Record, page 12.)

The statement that letters patent had been granted by the Patent Office of the United States is *prima facie* evidence of their novelty.

The plaintiff then prays, as a part of the relief founded upon this allegation,

"That the said defendants be restrained by injunction from * * * "making or selling bedsteads or other furniture under your orator's said "patent. * * *" (Record, page 17.)

The answer of the defendants expressly avers the anticipation of the above patent. In paragraph 7 they aver that

"They have been informed and believe that in making the said bed-"steads they are infringing npon the rights of other prior patentees "against whom they are obliged to protect themselves by contracts of "purchase or otherwise, or wholly discontinue the manufacture of bed-"steads which they had been making, and in the introduction of which "they had expended large sums of money, which they could not afford "to lose; that among such patents were one to Andrew Stark, and an-"other or others to Sebeus C. Maine, which covered the leading and

"only valuable features of the bedstead they have been manufacturing "and selling." (Record, page 19.)

In the eighth paragraph, they expressly aver as follows:—

"And the defendants aver that because of the existence of prior pat- "ents, and for want of utility and novelty, they have been advised "that the said patent of the plaintiff is useless and utterly worthless, "and that their said contract with him is without consideration and void "in law." (Record, page 20.)

The anticipation, therefore, of the principal patent involved in this cause, No. 148,940, is set up by the answer as a defence to the bill, and the most important portion of the relief prayed for is an injunction against the defendants as mere naked infringers of this patent. The issue differs in no respect from that which it would necessarily be if the plaintiff had filed his bill in the Circuit Court of the United States, setting up his patent, alleging that the defendants were infringing it, and praying, as part of his relief, an injunction that they be restrained henceforth from manufacturing under the patent; and the defendants in their answer had set up as a defence that the patent was anticipated by prior patents.

It has always been held by this court that the question of jurisdiction depends primarily upon whether the pleadings in the cause raise directly an issue involving *the question of infringement.*

"An action," says Chief Justice Waite, "which raises a question of "infringement, is an action arising 'under the law,' and one who has the "right to sue for the infringement may sue in the Circuit Court." Littlefield *vs.* Perry, 21 Wallace, 222.

SECOND.

The court below had no jurisdiction to make a decree enjoining the defendants from manufacturing bedsteads and other furniture under letters patent No. 148,940 (Everitt's Patent), and from selling any bedsteads made under said patent and improvements (letters patent Nos. 159,908,

181,450, 182,465, and 210,777), manufactured after the date of that decree.

This decree made in this cause is printed on page 25 of the record.

It has been already stated that the pleadings raise directly the question of the anticipation of letters patent No. 148,940, (Everitt's patent) as a defense against the bill, and that the plaintiff prayed in the second prayer of his bill for an injunction restraining the defendants from manufacturing the bedsteads made under the patent. The facts, as they appear in the bill and answer, were that a contract in regard to this patent had existed between the parties which it was alleged by the plaintiff the defendants had broken, and had therefore forfeited all rights thereunder. The plaintiff therefore claimed, as he had a right to, a reassignment of his patent, together with further letters patent for improvements thereon which he alleged he was entitled to. The defendants tendered a reassignment of letters patent No. 148,940, deposited an executed assignment, which the plaintiff refused to receive, with the clerk of the court, but denied their liability to assign the other patents, and admitted that they claimed no further rights under the contract, whatever they were. Upon a hearing of the cause upon bill and answer, the plaintiff then asked the court to treat the defendants as mere naked infringers, not only of his own patent, of which they had tendered him a reassignment (letters patent No. 148,940), but also of letters patent Nos. 159,908, 181,450, and 182,465; by this short cut the plaintiff designed to obtain all of the relief to which he might be entitled in the State court, to wit, a reassignment of his own and other patents; and before his right to the reassignment of all but one of them was even heard, to obtain in the meanwhile an injunction against infringement by the defendants, to which he would have been entitled thereafter in the Federal courts, in case he obtained an assignment of all of the patents.

The defendant in error has endeavored to elude this difficulty by alleging that there was a contract involved in the case about

a patent, and that he sued to recover for royalties due under the contract. Undoubtedly if the contract *alone* were involved, and the patent or patents *were not brought into question;* or if no question of infringement of these patents arose, the construction of such a contract merely to have a determination of the plaintiff's rights under it, would belong to a State tribunal. We propose to show, however, what indeed is obvious upon a cursory inspection of the record, that the issue raised by the bill and answer involved not only a dispute about a contract, but other and entirely distinct matters; that it involved directly *the plaintiff's patent*, and that he prayed for and obtained a decree against future *infringement of it*, not by way of relief upon his contract, but entirely independently thereof. The contract is printed in full on page 13 of the record, and also on page of this paper-book, for the convenience of the court. A very brief inspection of it will show that it was a contract by which the defendants, as manufacturers, were to manufacture and sell the inventions supposed to be covered by the plaintiff's patent, at a fixed royalty of seven per cent. The mode and times at which they were to render accounts of royalty were specified, and the proviso that if they remained in default in accounting for sixty days, they were to forfeit their rights under the contract and reassign the patent, was inserted to protect the plaintiff. The eighth clause, providing that if the patent were adjudged void, or to infringe any other patent, the defendants might reassign and be no longer bound by their covenants, was, of course, designed to protect them.

Under this contract, the plaintiff had, in case the defendants defaulted in accounting, two remedies. He could either sue them under the contract for an account, in which case he confirmed it as a continuing contract, or he could, at his option, put an end to it, and require a reassignment of his patent. But these two remedies were entirely exclusive of each other. If he *affirmed* the contract, it left the defendants not only at liberty, but under an obligation, to go on and manufacture. If on the other hand, he prayed for a *reassignment of his* patent, this put an end to the contract, as it left them no longer

(if the patent were valid) at liberty to manufacture under it, and no longer, of course, bound to account under it, or bound in any way by its covenants. Now, in the relief in the decree which the plaintiff prayed for in his bill and obtained from the court, he not only asked in the second prayer for a *reassignment* of his patent, but also a decree actually *enjoining the defendants* from further manufacturing under the patent.

"And from manufacturing bedsteads and other furniture under the "said patent, and from selling any bedstead made under said patents, "and improvements manufactured after the date of this decree." (Record, page 25.)

This decree proceeded, distinctly and only, upon the ground that whatever contract had theretofore existed between the parties was then there effectually ended by the enjoining of the defendants from manufacturing at all thereafter under it. Nor was this injunction against infringing the patent awarded as any remedy upon the contract. There was no provision in the contract by which the defendant should be prevented, restrained or enjoined from manufacturing unless they failed to pay promptly. It was not necessary, in any way to secure the plaintiff in his rights; because in the first place it was not averred that the defendants were not solvent or fully able to respond to any claim for damages; and in the second place they by their answer averred that they had *tendered a reassignment* of the patent to the plaintiff and that he had refused it, and that they had placed a reassignment of it in the hands of the clerk of the court at the time of their filing their answer. (Record, page 19.) Moreover, it was not contemplated by the plaintiff himself, as a remedy on his contract, for the second prayer of his bill prayed for a reassignment of the patent: showing, apart from the third prayer, that he had put an end to the contract.

Lastly, whether or not the injunction against infringement had been prayed for by the plaintiff as a remedy upon the contract, the defendants had set up the anticipation of the letters patent themselves, and said that they were usless and worthless for want of novelty; it was therefore beyond the jurisdiction of the court to grant such an injunction,

because it involved a *question of infringement*, which is a question exclusively within the jurisdiction of the Federal courts.

The first two of these points are obvious upon an examination of the contract, *supra*. It would be a mere repetition of what has already been stated to show that an injunction against infringing the patent was no part of any possible remedy under the contract, or contemplated by it. If the contract still existed between the parties, the defendants had a right to manufacture under it and could not be enjoined.

But it appears upon the pleadings themselves, apart from the plaintiff's prayers and the decree, that the contract had been actually put an end to by the parties. The plaintiff in his bill, which was filed on September 24th, 1878, set forth (Record, page 16):—

"That the said defendants had continued in default for more than sixty "days in not accounting for and paying over to your orator the royalty "due under said agreement after your orator had demanded from the "defendants payment of the same, whereby the rights of the said de- "fendants to your orator's said patent, and the said improvements there- "on, were forfeited."

The answer admits (Record, page 19):—

"That it is true that the defendants have continued in default * * "for more than sixty days in not paying over under the said agree- "ment, * * * and they agree that they have forfeited their rights to "the plaintiff's said patent, and, although they have not hitherto reas- "signed the same, they have caused and offered so to do to be made to "the plaintiff in person, and through counsel, but it has not been ac- "cepted, &c., &c."

And the master, all of whose findings were adopted by the court below, says (Record, page 49):—

"That the defendants are in default within the terms of the fifth arti- "cle of the contract, and that they have continued in default for more "than sixty days *before the bill was filed*," *i. e.* before September 24th, 1878.

So that on September 24th, 1878, when the bill was filed, the defendants had forfeited their rights under the contract;

and when the defendants had filed their answer on the twenty-second day of November, they admitted the default, and tendered a reassignment of the patents. In addition, as already stated, the plaintiff by the second prayer of his bill (Record, page 17) prayed:—

"That the defendants be ordered to reassign to your orator the said "letters patent of your orator and the improvements thereon, and all "rights to use the said patented invention under the said agreement."

And in addition, as already stated, on December 8th, 1878, the court made a decree (Record, page 25) as follows:—

"And now, December 8th, 1878, this case came on to be heard on bill "and answer."

And then proceeded:—

"And it is further ordered that an injunction issue directed to the said "defendants, commanding and enjoining them not to dispose of the said "patent and the improvements thereon to any person or persons other "than the plaintiff, and from manufacturing bedsteads and other furni-"ture under the said patent, and from selling any bedstead made under the "said patents and the improvements manufactured after the date of this "decree.

I. It may be objected that this decree appears to be one made by the consent of the defendants. The ground of this allegation is that the defendants, not wishing to hold any longer the Everitt patent, believing it to be utterly invalid, and being perfectly willing to account to the plaintiff for all that they believed to be due to him under their contract, said, in the ninth paragraph of their answer, that they were

"not now manufacturing any bedsteads under the patent of the said "plaintiff, and do not propose to do so hereafter; that they confess judg-"ment, and submit themselves to a decree of the court in favor of the "said plaintiff as to all the prayers of their said bill, except to that part "of the second prayer which requires that they should assign to the said "plaintiff the patents which they have secured for improvements of their "own," &c.

The defendants meant, of course, by this paragraph to submit themselves to any decree which the court might make in the premises, on subjects within their jurisdiction. They had no more conception of being enjoined from manufacturing

under their own improvements which were then held by them in their own names, and upon the question of the ownership of which the court had not even heard an argument, than they had of submitting to a decree for a reassignment of the Stark patent then owned by them. Upon the assumption, however, that these lines of the defendants' answer above quoted would give a State court jurisdiction to enjoin against an infringement, the complainant drew up and obtained from the court a decree which (as will be shown in a moment) was a final decree in the cause upon so much of the matter as was covered by it, in which they recited:—

"And now, December 8th, 1878, this cause came on to be heard on "bill and answer, and it appearing to the court that the said defendants, "by their answer, have submitted to a decree in favor of the plaintiff as "to all the prayers of the bill, except so much of the second prayer as "prays for a reassignment of the improvements in the manufacture of "bedsteads mentioned in said bill.

"It is ordered, adjudged and decreed, &c."

II. It is hardly necessary to contend that this attempt, such as it is, to support such a decree by the so-called admission or submission in the defendants' answer, is without legal foundation. Consent of the parties cannot give jurisdiction to any court.

"It is true," said this court, in Mills *vs.* Brown, 16 Peters, 527, "that "the plaintiffs and defendants in error have both waived all objections to "jurisdiction, and have pressed the court for a decision on the principal "points. But consent will not give jurisdiction."

So, in Dudley *vs.* Mayhew, 3 Comstock's Reports (3 N. Y.), page 11, wherein a suit on a patent, an injunction had been granted, as here, restraining the manufacture of a patented article, as part of the relief, Strong, J., said:—

"It was insisted on the argument before us as it had been in the court "below by the counsel for the plaintiff, that the defendant was precluded "from raising the question of jurisdiction by his written stipulation that "he wouldn't do so, given for a valuable consideration, and filed by the "examiner as a document in the cause. It may have been a breach of "faith or good morals in the defendant to insist upon the objection after "his solemn agreement to waive it; but that is no reason why any court "should adopt the strong measure of granting a perpetual injunction in "a case where it has no jurisdiction. It has been long and correctly

"settled that not even a direct assent by the party can confer jurisdic-"tion, or render the judgment of a tribunal in a matter over which it has "not by law any cognizance effectual." (Referring to Coffin *vs.* Tracy, 3 Caines Rep., 129; Davis *vs.* Backard, 7 Peters, 276.)

III. The defendant has attempted to argue, and may argue again, that the decree of December 8th, 1878, was not a final or permanent one, but only an interlocutory decree, and that the court made a further decree in 1882, upon the report of the master's coming in.

(*a.*) The decree of December 8th is a final decree. The decree purports to be and is a decree in the case after hearing on bill and answer. (See Record, page 25.) The decree is in these words:—

"*Elisha E. Everitt*	Common Pleas, No. 4. Sept. T., 1878.
"vs.	In Equity.
"*Henry S. Hale* et al.	No. 565.

"And now, December 8th, 1878, this cause came on to be heard on "bill and answer, and it appearing to the court that the said defendants, "by their answer, have submitted to a decree in favor of the plaintiff as to "all the prayers of the bill, except so much of the second prayer as prays "for a reassignment of the improvements in the manufacture of the bed-"steads mentioned in said bill.

"It is ordered, adjudged, and decreed that an account be taken of all "and every the bedsteads and furniture manufactured by the defendants "under the patent and improvements mentioned and referred to in the bill "after the sixteenth day of April, 1874, and of all moneys realized from "the sale of the same, and that the cause be referred to C. Stuart Patter-"son, Esq., as master, to take and state such account, and that the de-"fendants pay to the plaintiff whatever money shall upon such account "be found due to him, and it is further ordered that an injunction issue di-"rected to the said defendants, commanding and enjoining them not to "dispose of the said patent and the improvements thereon to any per-"son or persons other than the plaintiff, and from manufacturing bed-"steads and other furniture under the said patent, and from selling any "bedstead made under said patents and improvements, manufactured "after the date of this decree.

"And it is further ordered that the said C. Stuart Patterson, Esq., be "directed, as Examiner and Master in the cause, to take testimony upon "the matters pending in the second prayer of the plaintiff's bill, and re-

"port the same and the facts relating thereto, and such further decree as "the Court ought to make.

"With liberty for either party to apply, &c.,

"December 9th, 1878. "M. R. T."

It will be observed that this decree orders an account to be taken of all bedsteads manufactured under the patent after the 16th of April, 1874. This was because the defendants admitted their liability to account under the contract from that date in their answer. (See Record, page 12, paragraph 2d of Bill, and Record, page 18, paragraph 1 of Answer.) The decree further orders that the injunction do issue absolute, directed to the said defendants,—

"commanding and enjoining * * * from manufacturing bedsteads "and other furniture under the said Patent, and from selling any bed- "stead made under said patents and improvements, manufactured after "the date of this decree."

The only other matter referred to the master is the matter which is left open by the denial of the defendants, namely, the liability to reassign the improvements, as prayed for in the second prayer of the bill.

"And it is further ordered that the said C. Stuart Patterson, Esq., be "directed as Examiner and Master in the cause to take testimony in the "matters pending *in the second prayer of the plaintiff's bill*, and report "the same and the facts relating thereto, and such further decree as the "court ought to make."

Now a decree is a final decree wherever upon any matter involved in the suit or prayed for by the complainant, the decree is final and absolute, and does not refer it to a master to take any further proof or to direct an inquiry in the cause. Any decree made upon bill and answer by the court is generally final upon the matter with which it deals. The mere fact that accounts are to be taken, does not make it an interlocutory decree.

In *Seton on Decrees*, 3d Ed., Vol. 1, page 2, the author says:—

"In interlocutory decrees, the consideration of the particular question "to be determined, or of the further consideration generally, is adjourned "by the decree."

And he adds,

"though accounts are directed, the decree is still properly termed a de-
"cree, because the right of the plaintiff to call upon the defendant to
"account, which is often disputed, is determined by it; but a preliminary
"direction at the hearing for an inquiry only is not properly a decree,
"but a decretal order. Horwood *vs.* Schmedes, 12 Ves., 315."

So in Daniel's Chancery Practice (page 993, note 8),

"A decree may be final, although it directs a reference to a master; if
"all the consequential directions depending upon the result of the mas-
"ter's report are contained in the decree, so that no further decree of
"the court will be necessary upon the confirmation of the report—to
"give the parties the entire and full benefit *of the previous decision of*
"*the court.* Mills *vs.* Hoag, 7 Paige, 18.

So also on page 996:—

"Although the general rule of the court is to make a complete decree
"upon all the points connected with the case, it frequently happens that
"the parties are so circumstanced that a decision upon all the points con-
"nected with their interests, cannot be pronounced until a further period.
"* * * All that the court, therefore, usually does, under such
"circumstances, is to decree the interest of the fund to be paid to the
"person entitled to dividends during his life, and to declare that, upon
"his death, the parties interested in the fund are to be at liberty to apply
"to the court as they may be advised. The same sort of liberty is also
"given in any other case in which it may seem requisite; and the effect of
"it is not to alter the final nature of the decree. A decree, with such a
"liberty reserved, is still a final decree. * * * There are some
"cases of decrees, which, although they are final in their nature, require
"the confirmation of a further order of the court before they can be acted
"upon."

This entire subject was discussed in this court, in the case of Forgay *vs.* Conard, 6 Howard, 204. In that case a decree was made by the Circuit Court of the United States that certain deeds should be set aside as fraudulent and void; that certain lands and slaves therein mentioned should be delivered up to the complainant, with the direction that the complainant have execution for the subject-matter aforesaid. The decree then directed that the master take an account of the profits, lands and slaves, ordered to be delivered up, from the time of the filing of the bill until the property was delivered, or to the date of the master's report, and also an account of the money

and notes received by one of the defendants in fraud of the creditors of the bankrupt, and concluded in the following words:—

"And so much of the said bill as contains or relates to matters hereby "referred to the master for a report is retained for a further decree in the "premises; and so much of the said bill as is not now or has been here- "tofore retained for the purposes aforesaid, be dismissed without pre- "judice, and that the said defendants do pay the costs."

A motion to dismiss was made, and the question arose whether this was a final decree. Mr. Chief Justice Taney said:—

"The question upon the motion to dismiss is whether this is a final de- "cree, within the meaning of the Acts of Congress. Undoubtedly, it is "not final, in the strict, technical sense of that term. But this court has "not heretofore understood the words final 'decrees' in the strict and "technical sense, but has given them a more liberal, and, as we think, a "more reasonable construction, and one more consonant to the intention "of the legislature.

"In the case of Whiting *vs.* The Bank of the United States, 13 Peters, "15, it was held that a decree of foreclosure and sale of mortgaged prem- "ises was a final decree, and the defendant entitled to his appeal without "waiting for the return and confirmation of the sale by a decretal order. "And this decision is placed by the court upon the ground, that the de- "cree of foreclosure and sale was final upon its merits, and the ulterior "proceedings but a mode of executing the original decree. The same "rule of construction was acted on in the case of Michoud and others "*vs.* Girod and others, 4 Howard, 503.

"The case before us is a stronger one for an appeal than the case last "mentioned. For here the decree not only decides the title to the prop- "erty in dispute, and annuls the deeds under which the defendants "claim, but also directs the property in dispute to be delivered to the "complainants and awards execution. And according to the last para- "graph in the decree, the bill is retained merely for the purpose of ad- "justing the accounts referred to the master. In all other respects, the "whole of the matters brought into controversy by the bill are finally "disposed of as to all of the defendants, and the bill as to them is no "longer pending before the court, and the decree which it passed could "not have been afterwards reconsidered or modified in relation to the "matters decided, except upon a petition for a rehearing, within the "time prescribed by the ruling of this court, regulating proceedings in "equity in the circuit courts. If these appellants, therefore, must wait "until the accounts are reported by the master and confirmed by the "court, they will be subjected to irreparable injury, for the lands and

"slaves which they claim will be taken out of their possession and sold, "and the proceeds distributed among the creditors of the bankrupt, be- "fore they can have an opportunity of being heard in this court in de- "fense of their rights. We think, upon sound principles of construc- "tion, as well as upon the authority of the cases referred to, that such is "not the meaning of the Acts of Congress."

In analogy with this view it may be observed that it is precisely in conformity with the practice in most of the Circuit Courts of the United States. Where an injunction and account are asked for on the ground of an infringement of a patent, on the coming in of an answer, an injunction is often pronounced with an order for the appointment of a master to calculate the amount of damages for infringement, &c., &c. The decree that is finally made by the court merely specifies the amount to be paid; it does not repeat the decree restraining the defendants from infringing. The order made upon the bill and answer therefore is in itself a final decree.

The fact that the words "with liberty to either party to "apply, etc." (Record, page 25) are added to the decree of December 8th, 1878, has already been shown in the above quotation from Daniel's Chancery Practice, page 996, to have no bearing upon the question whether the decree is final or not, these words often being added to final decrees. In the same way the fact that the court, after the coming in of a Master's Report, made a further decree (see Record, page 503) has no bearing upon the matter. The original decree (Record, page 25), was a decree which referred only to the master, first,

"That an account be taken of all and every bedstead and furniture "manufactured by the defendants under the patents and improvements "mentioned and referred to in the bill after the sixteenth day of April, "1874, and of all moneys realized from the sale of the same."

And secondly,

"To take testimony upon the matters pending in the second prayer of "the defendant's bill, and report the same and the facts relating thereto, "and such further decree as the court ought to make."

This second prayer of the bill related to the assignment of the patent and nothing else, and the decree entered in the court on the coming in of the Master's Report related to

nothing else. Here is the decree entered April 22d, 1882 (Record, page 523) :—

"*First.*—That all the said exceptions be dismissed, and that the said "report of the master be confirmed.

"*Second.*—Upon the account as stated, of the defendants' sale under "the plaintiff's patent, and the contract of sixteenth April, 1874, the de- "fendants are indebted to the plaintiff in the sum of Six thousand Five "hundred and Fifty-four Dollars and fifty-eight cents ($6,554.58), with "interest from tenth December, 1878, the date of the entry of the inter- "locutory decree in this cause; and the defendants are hereby directed " to forthwith pay to the plaintiff the said sum of Six thousand and five "hundred and fifty-four dollars and fifty-eight cents, with interest as "aforesaid.

"*Third.*—The defendants are hereby directed forthwith to assign and "deliver to the plaintiff the Letters Patent for an improvement in fold- "ing bedsteads, numbered 148,940, and dated twenty-fourth March, "1874.

"*Fourth.*—The defendants are hereby directed to forthwith assign "and deliver to the plaintiff the following Letters Patent, to wit: Num- "ber 159,908, granted sixteenth February, 1875, to H. W. Curtis; num- "ber 181,450, granted twenty-second August, 1876, to C. Kilburn; num- "ber 182,465, granted nineteeth September, 1876, to S. D. Newcomb, "and number 210,777, granted tenth December, 1878, to Henry S. Hale.

"*Fifth.*—The defendants are directed hereby forthwith to assign and "deliver to the plaintiff the reissued patent, numbered 8161, and granted "ninth April, 1878, to Andrew Stark.

"*Sixth.*—The costs of the cause are directed to be paid by the de- "fendants.

"April 22d, '82. M. R. T."

It is therefore obvious that the further decree of April 22d, 1882, was not necessary to give the plaintiff the entire and full benefit of the previous decision of the court. See Mills *vs.* Hoag, 7 Paige, page 18, and also Forgay *vs.* Cornad, *supra*.

The second decree added nothing upon the subject matter of the first decree. It professed merely to relate to those matters which the first decree had referred to the master for his decision.

A decree upon bill and answer which decides certain rights between the parties by granting certain prayers for relief, and refers the remaining prayers only to a master, is a final decree in its nature upon the particular questions involved, and a

comparison of the two decrees made, the one in December 8th, 1878, and the other April 22d, 1882, will show that the two decrees are supplemental to each other, and that the latter simply refers to such matters as by the original decree were referred to the master to determine.

(*b.*) Under either of the views above presented, whether the decree of December 8th, 1878, was final, or whether it was an interlocutory decree, binding upon the defendants from December 8th, 1878, when it was pronounced, up to and including April 22d, 1882, it is perfectly clear that the State court had no jurisdiction to make it; for if the decree were valid it would follow that the defendants were liable from December 9th, 1878, to April 22d, 1882, for any disobedience to or infraction of this decree. Now the decree enjoins them from manufacturing any bedsteads under Everitt's or the four other patents, so that if they have manufactured bedsteads, covered by the claim of these patents, as they now stand they are liable, on a summary hearing upon a motion for an attachment, to be fixed with damages for manufacturing and selling these articles during the whole of this period, whether the patents are, in fact, valid or not. Observe, the decree is, they shall not sell any bedstead under these patents. Any bedstead infringing them would be within the words of the decree. So that although the defendants have, by way of defense in their answer, set up the utter worthlessness of the complainant's patent by reason of anticipation, they are nevertheless, under this extraordinary order, liable now to pay damages for infringing it, whether the patent is valid or not. If the jurisdiction of this court, therefore, is not sustained, the claim will at once be put forward, that the defendants have violated the decree of December 9th, 1878, by selling bedsteads made under the plaintiff's patent. The defendants may urge in vain that his patent is invalid, that they, as well as the rest of the public, had a right to manufacture these articles. It will be answered that the matter for the four years from December 9th, 1878, to April 22d, 1882, is *res adjudicata* anyhow; that the defendants were enjoined from manufacturing and selling for these four years

under any possible view, and that upon an attachment for an alleged disobedience to the order, as the cause is now ended, they cannot, as to this period, make any further defense at all.

IV. Now, under either of the views above presented of this order, it is perfectly clear that the State court had no jurisdiction whatever to make it. It is true that where the rights of parties to a litigation depend, or are alleged to depend, wholly upon a contract, a State court can determine, first, whether or not such a contract exists, and secondly, if it be found to exist, whether the complainant has rights under it, and if so, enforce them. Where a contract with regard to a patent right is set up, but the validity of a patent is itself not questioned by either party, this court, in Wilson *vs.* Sanford, 10 Howard, 99, and Hartell *vs.* Tilghman, 9 Otto, 547, decided that the mere fact of the contract's relating to a patent does not of itself give the Federal courts jurisdiction. It was doubted by some members of this court, in Hartell *vs.* Tilghman, whether, even where the validity of the patent in question was admitted, but the existence of any contract as to it denied, the plaintiff could not sue in the Federal courts as for an infringement.

But where *infringement* is sought to be relieved against, a construction of the patent is involved; and this raises a question under the act of Congress, which provides that all actions arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions, shall be exclusively cognizable to the Circuit Courts.

"The Act of Congress," says Chief Justice Waite in Littlefield *vs.* Perry, 21 Wallace, 222, "provides 'that all actions, suits, controversies "'and cases arising under any law of the United States, granting or "'confirming to inventors the exclusive right to their inventions or dis-"'coveries shall be originally cognizable as well in equity as at law in "'the Circuit Courts,' &c. An action which raises a question of in-"fringement is an action arising 'under the law'; and one who has the "right to sue for the infringement may sue in the Circuit Court. Such "a suit may involve a construction of a contract as well as the patent, "but that will not oust the court of its jurisdiction. If the patent is in-"volved, it *carries with it the whole case.*"

It is thus provided in the Revised Statutes:—

"Section 711. The jurisdiction vested in the courts of the United

"States in the cases and proceedings hereinafter mentioned shall be ex-
"clusive of the courts of the several States. * * *

"*Fifth.*—Of all cases arising under the patent right or copyright laws
"of the United States."

The State courts have refused to grant injunctions against the infringement of patents, even where a contract exists between the parties.

In New York, as early as the case of Parsons *vs.* Barnard, 7 Johns., 143, it was held that the courts of that State had no jurisdiction in actions brought for the infringement of patent rights granted by the United States, and that the cognizance of such actions belonged exclusively to the Federal courts.

In Gibson *vs.* Woodworth *et al.*, 8 Paige, 131, the chancellor (Woolworth) refused to settle the conflicting claims of persons based upon two interfering patents.

In Dudley *vs.* Mayhew, 3 N. Y., 9, *supra*, the Court of Appeals again refused to take jurisdiction in a suit instituted to restrain the infringement of a patent right.

In Hovey *vs.* The Rubber Tip Pencil Company, 57 N. Y., 119, the court refused to take jurisdiction of a suit for libel which involved the question whether the plaintiff's trade was an infringement upon the patent rights of the defendant. Said Johnson, J.:—

"The case before us is founded upon the right of the plaintiffs under
"the patent law. To that right they allege an injury by the act of the
"defendant. The defendant admitting the fact attributed to it, justifies it
"under rights which it claims under the same laws. To dispose of the
"question requires the direct decision of the court upon these rights, with
"a view to ascertain, in the language of the statute, whether there has
"occurred a violation of the right of an inventor as secured to him by
"the laws of the United States. If the plaintiff's patent is invalid, they
"have no standing in court founded upon it."

Finally, two very recent cases have been decided where the same question that is raised here has been again passed upon. In the Continental Store Service Company *vs.* Curtis Clark *et al.*, 100 N. Y., 365 (Nov. 1885), it was held in a case very similar to the present, where the plaintiff brought an action to compel the specific performance of a written agreement concerning a patent, and also for an injunction to restrain the

respondents from using the patents *pendente lite*, that the court had no jurisdiction to grant such an injunction, although the parties stood toward each other in a contractual relation. Said Miller, J.:—

"It cannot be said, we think, where a suit is brought upon a contract "relating to a patent, where it is sought to prevent an infringement upon "the rights of the patentee, that the case presented arises exclusively under "a contract and not under the patent laws. It may arise under a con- "tract so far as an interpretation of the same is required and demanded, "but where it is sought in addition to prevent an infringement of the "patent and by injunction to restrain the defendant from an invasion of "the plaintiff's rights in the use of the patent, it cannot be claimed that "it does not arise under the patent laws, and that, by seeking relief "against an infringement upon the rights of a patentee, there is no in- "terference with the jurisdiction conferred upon the courts of the United "States in such a case."

Then, after showing that in the case of Hartell *vs.* Tilghman (99 U S., 547), there was no question of infringement arising and hence it was not applicable to the case before the court, he continued:—

"We have examined the other cases cited by the appellant in support "of the position that the State court has jurisdiction in the case con- "sidered, and we do not find that any of them sustain that view where "a question as to the infringement of a patent is involved. The Federal "courts have exclusive jurisdiction, under the Constitution and laws of "the United States, in cases of any infringement of the rights granted by "a patent issued by the authority of the government, and where such "rights are conferred by law and a remedy is provided as to the *forum* "where the same may be enforced, the party must be restricted to the "remedy and the *forum* provided." * * * "The courts of this "State have an undoubted right to adjudicate upon questions arising in "reference to the title to letters patent as well as other questions as to "the rights of parties which do not come within the provisions of law "relating to patent rights. In such cases the right secured by the patent "is collateral to the main purpose and object of the action, and when "this is the case the State courts have jurisdiction to determine the con- "troversy, and while they have authority to this extent they cannot ac- "quire jurisdiction beyond this. Here is the dividing line, and a State "court cannot grant relief beyond its jurisdiction as an incident to other "relief which is within its power. It may determine what the contract "is and in whom the title to the patent is vested, but it has no right to "say that a party shall be enjoined from using the patent, or in any way "to pass upon any question arising as to its infringement."

Finally, in Hat Sweat Manufacturing Company *vs.* Reinoehl, 6 Northeastern Reporter, 264 (April, 1886), the same court again refused an injunction to restrain the defendants from manufacturing and selling under certain patents until they should pay the royalties claimed by the plaintiff by virtue of a lincense granted to defendants. Said Miller, J.:—

"The plaintiff's claim rests upon the contract entered into between "it and the defendants, by virtue of which the defendants were licensed "to manufacture and use the sweat-bands which are the subject of this "controversy. The defendants claim that they were induced to sign said "contract by fraudulent representations, and that upon discovering the "fraud they repudiated the contract." * * * * "It is "also apparent that the question as to the validity of the patents, and "the right of the plaintiff to the exclusive use of the same, is the subject "of controversy to be determined in the action." * * * * "Within the rule laid down in the case cited, it is manifest that no juris- "diction existed to grant the injunction against the defendants; that the "remedy of the plaintiff by injunction was vested exclusively in the Uni- "ted States courts."

In Massachusetts, in the case of Kempton *vs.* Bray, 99 Mass., 350, the Supreme Court refused to take jurisdiction of a bill for an injunction brought by one who had been appointed sole agent for the manufacture and sale of certain patented articles against his principal, the patentee, to restrain the latter and his subsequent assignee of the patent right from manufacturing and selling machines under the patent. Said Gray, J.:—

"It is immaterial whether an interest in the patent has or has not been "duly assigned to Bray (the defendant). If it has, Bray is not liable to "anyone for exercising the privileges of the owner of such an interest. "If it has not, any remedy for an infringement by him of the patent must "be sought in the courts of the United States. Dudley *vs.* Mayhew, 3 "N. Y., 14, and cases cited."

Wherever, therefore, the question has been passed upon by the State courts it has been held that although the rights of parties to a contract are also involved, a State court cannot supplement the relief given by virtue of the contract by granting an injunction restraining an infringement of the patent.

Here the question of whether the patent was anticipated or not, upon which the validity of the injunction exclusively

depends was one involving the construction of a patent, and thus—

"arising under a law of the United States granting or confirming to in-
"ventors the exclusive right to their inventions."

If the patent was anticipated, no court, after the contract between the parties had been ended, could enjoin the defendants or any one else from selling these articles.

But if the court had no jurisdiction then to issue this injunction, they have no power now or hereafter to enforce it, nor, consequently, to inquire whether the defendants, after the date of this order, and while it was in force—whether up to the present time, or only up to April 22d, 1882—have sold bedsteads "made under this patent," and, if they have done so, to mulct them in damages or otherwise punish them for having done so.

But this is precisely what, unless the court interferes here, will be done, and, as will be in a moment shown, has been already partially attempted; and these defendants will be compelled to pay between $14,000 and $20,000 in addition to the amount of the present decree, for doing that which, if their allegation that the Everitt patent is anticipated by prior patents and worthless for want of novelty, be true, they had a perfect right, in common with every other citizen of the United States, to do. And this consideration leads us directly to the next ground of appeal.

THIRD.

The court below had no jurisdiction to make a decree ordering the defendants to pay to the plaintiff, inter alia, $971.98, for the sale of bedsteads and articles of furniture by them under the plaintiff's patent, after all contract relations between the parties had been determined.

I. The part of the decree complained of is the second paragraph of it (Record, page 503), which declares that the

defendants are indebted to the plaintiff in the sum of $6554.58, with interest from December 10th, 1878.

To ascertain how much of this decree is for what the court decided, as they had doubtless jurisdiction to decide, was due to the plaintiff *under the contract* set up by them,—and how much of it they fixed the defendants with by reason of their conduct after the date at which the court itself found all contract relations between the parties had ceased,—we must look at the record itself; since in all of the United States "our decrees do not recite the facts as under the English chancery practice." (See Daniell's Chancery Practice, page 1576, note 6.)

"In the courts of the United States," as Judge Story says in *Dexter* vs. *Arnold*, 5 Mason's Reports, 311, "the decrees are usually general. "In England the decree embodies the substance of the bill, pleadings, "and answers. In the courts of the United States the decree usually "contains a mere reference to the antecedent proceedings without em- "bodying them. But for the purpose of examining all errors of law the "bill, answers, and other proceedings are, in our practice, as much a "part of the record before the court as the decree itself; for it is only by "a comparison with the former that the correctness of the latter can be "ascertained."

And it is obvious that this must be done in a case like the present, or otherwise a State tribunal, by mingling together in a money decree what they found due under a contract between the parties, and what they fixed the defendants with by way of damages for infringement, would practically acquire the requsite jurisdiction to pronounce a decree for damages for in fringement.

So in Mills *vs.* Brown *et al.*, 16 Peters, 526, CHIEF JUSTICE TANEY says:—

"The plaintiffs in error thereupon filed their bill in the Circuit Court "of the State, praying that the county of St. Clair and the said commis- "sioners should be enjoined from further proceedings under the act of "Assembly last above-mentioned. The respondents, the present defend- "ants in error, appeared and demurred generally to the bill; and upon "final hearing of the cause the demurrer was sustained by the Circuit

"Court, and the bill dismissed. From this decision the complainants "appealed to the Supreme Court of the State, where the decree "of the Circuit Court was affirmed. The points proposed to be raised "here are, first, whether the act of Assembly of 1819 was not a contract "with the said Wiggins, his heirs and assigns; and, second, whether the "act of 1839 does not impair the contract.

"These points are not directly stated in the pleadings, nor are they "noticed in the decree of the Circuit or Supreme Court of the State. "Yet if it appeared from the bill that the court could not have sustained "the demurrer without considering and deciding these points; if they "were necessarily involved in the decision of the case as presented "by the bill and demurrer, this court would have jurisdiction upon the "writ of error, although they are not expressly stated in the decrees to "have been raised and decided."

We have already shown by the analysis made under the second point of the argument, that when the plaintiff filed his bill declaring that the defendants had continued in default under the contract for more than sixty days, whereby the rights of the defendants to the patents were forfeited, and his prayer for the assignment of the patent, and the improvements on it, and also for an absolute injunction against manufacturing any longer under it, that he had thereupon put an end to the contract. Moreover, when the defendants filed their answer they admitted that they had forfeited their rights under the contract.

And the master, all of whose findings are adopted by the court below (Record, page 49),

"finds that the defendants are in default within the terms of the fifth "article of the contract, and that they continued *in default for more* "*than sixty days before the bill was filed*," &c.

So that, on the 24th of September, 1878, when the bill was filed, the defendants had forfeited their rights under the contract, and thereafter the rights of both parties under it were terminated, and they were remanded to their respective rights outside of it. Either party could sue, as the plaintiff did sue, for *prior* infractions of it, but neither party could sue under it for any matter after this date. The plaintiff, upon accepting the reassignment of his patent tendered him could, and of

course can still, sue the defendants in the Federal courts as infringers under his patent, for any act committed after September 24th, 1878, and provided he can show that the articles he alleges covered by his patent constitute infringements, and that his patent is valid, can recover. But he could not in the State court ask for an injunction restraining the defendants from manufacturing at all, and proceed against them as infringers.

The court below, however, after having granted an injunction against the defendants as infringers, which they had no jurisdiction to do, ordered by their decree of December 8th, 1878 (Record, page 25), an account to be taken of all the bedsteads manufactured under the patent after the 16th of April, 1874.

> "And of all moneys realized from the sale of the same, and that "the cause be referred to C. Stuart Patterson, Esq., as Master, to take "and state such account, and that the defendants pay to the plaintiff "whatever money shall upon such account be found due to him."

Instead of limiting the account to the duration of the contract between the parties, that is from 16th of April, 1874, its date, up to 24th December, 1878, when the plaintiff put an end to it, made their order wide enough to take an account against the defendants not only for royalty under the contract, but as infringers after the contract had been put an end to by both the parties. The Master accordingly went on and calculated what the defendants were liable to for the sale of bedsteads long after the plaintiff's bill was filed, and the defendants' answer was filed, for which they could be liable only, if at all, as infringers of the patent. The Master's Report the court by their decree of 22d April, 1882, confirmed.

The master and the court below first calculate what they find due the plaintiff under the contract, about $5600 (see Record, pages 134, 135), and then declare that the defendants are indebted to the plaintiff in the sum of $971.98, for bedsteads made under the patent after the contract between them had terminated, because the bedsteads are covered by the

patent which they held, for the purpose of this litigation at least, to be in all respects valid.

This appears by examining the master's "recapitulation" in which the amount due by the defendants every month is calculated. (Record, pages 134, 135.)

The amount up to and including August 31st, 1878, if added, appears to be $12,559.87, and the additional amount up to September 24th, 1878, appears from pages 120, 121, to be $305.60, making in all, ...	$12,865 47	
Less amount Cr. defendants as already paid by them, ...	7,049 38	
		$5,816 09
Which was further lessened by the amount of errors (see Appendix C to Master's Report, Record, page), made by the master, viz., ...	233 49	
		$5,582 60
So that the balance of the amount awarded by the decree, viz., as shown below, was for sales made after September 24th, 1878, when no contract existed between the parties, and the plaintiffs had prayed for the injunction to restrain the defendants from manufacturing.	971 98	
Total amount awarded by decree, ...	$6,554 58	
For articles sold during the month of September, after September 24th, 1878, see Record, page 135, ...	$70 85	
For articles sold during the month of October, 1878, ...	579 28	
For articles sold during the month of November, 1878, . . .	321 85	
		$971 98

The above appears in the last two lines of the recapitulation (Record, page 135) above alluded to, where the amounts charged the defendants for sales in October and November, 1878, are, respectively, $579.28 and $321.85, and it appears from the statement of sales on pages 120, 121 and 122 of his report that the sales made from September 24th to September 30th, were $1015.50, on which the master calculates $70.85 as due plaintiff.

This point was repeatedly called to the attention of the Court of Common Pleas as well as to the Supreme Court of Pennsylvania.

The following is the argument on this head printed and submitted first to the Common Pleas, and then to the Supreme Court:—

"Having elected to end the agreement, and by the filing of his bill "and prayer for a reassignment, having expressed such election, the "complainant is clearly not entitled to any profits under the contract "after the date of such election: because the relation which gave him "the right has ceased to exist.

"He can thereafter only claim profits against the defendants as *in-* "*fringers* of his patent (or patents if the Stark patent properly goes to "him), and the State court has no jurisdiction to decree an account of "such profits. Because the defendants would have a right to set up the "invalidity of such patents for any reason under the patent law on the "question of their own infringement; and such questions are exclusively "in the jurisdiction of the Circuit Court of the United States."

GEORGE HARDING,
GEORGE W. BIDDLE,
Of Counsel for Plaintiffs in Error.

Appendix.

COPY OF THE CONTRACT.

"EXHIBIT B."

"Agreement made and entered into this 16th day of April, A. D. 1874, by and between Elisha E. Everitt, of the City of Philadelphia, of the first part, and Henry S. Hale, Artemus Kilburn, J. Warren Hale, H. W. Curtis, Cheney Kilburn and Warren Hale, all of the said City, and there trading together as Hale, Kilburn & Co., of the second part.

"*Whereas*, Letters Patent of the United States were granted to the said party of the first part, for an Improvement in Wardrobe Bedsteads, said Letters Patent being dated March 24th, 1874, and numbered 149,940.

"*Now these Presents witness* that by and between the said parties hereto, it is agreed as follows:

"*First.*—In consideration of the sum of five hundred dollars to him by the said parties of the second part, in hand paid, the receipt of which is hereby acknowledged. And in further consideration of the faithful keeping, observance and performance by the said parties of the second part of the stipulations hereinafter contained, to be by them kept, observed and performed, the said party of the first part agrees to, and hereby does assign and set over to the said parties of the second part, the entire right, title and interest in and to said invention, as

secured by said Letters Patent, for, to and in the whole of the United States, the same to be held and enjoyed by the said parties of the second part for their own use and behoof of their legal representatives, fully, freely and entirely to the full end of the term for which said Letters Patent are granted, subject to the stipulations hereinafter contained; and covenants and agrees that he will, at the request and expense of the said party of the second part, execute all such lawful instruments of writing, and do all such lawful acts and things as may be requisite and proper to procure a re-issue of said Letters Patent, for the better securing to said parties of the second part of the interest hereby conveyed to them or intended so to be.

"*Second.*—The said parties of the second part agree to pay to said party of the first part, his heirs or assigns, a royalty or patent fee upon all of the said patented bedsteads, made and sold by them, at the rate of seven per cent. upon the wholesale prices received by them therefor; and, furthermore, to pay to said party of the first part, his heirs or assigns, one-half of the net profits which they may derive from the sale of any rights and licenses in and under said Letters Patent, and they agree to account for in writing, and to pay over, such sums as may be due under this clause of agreement, at the end of each and every month, from and after the date hereof; and furthermore, to keep just and true books of account, to be open at all reasonable times to the inspection of said party of the first part, his heirs assigns, or his or their duly authorized agent or agents, and showing the number of said patented bedsteads made and sold by them, and the prices received therefor, and showing also all rights and licenses granted under the patent, and the amount received therefor.

"*Third.*—The said parties of the second part promise and agree to use all reasonable efforts to promote the sale and introduction of the said patented bedsteads.

"*Fourth.*—The said party of the first part for himself, his legal representatives and assigns, agrees to defray one-half of

the expenses of any suits at law or in equity that it may be necessary to prosecute or defend for the maintenance of said Letters Patent, or to enjoin and recover against infringers thereon; and the said parties of the second part may retain from and out of moneys becoming due to the said party of the first part, his heirs or assigns, under the terms of the second clause of this agreement, sufficient to defray the said proportion of said party of the first part, of such expenses; and the said party of the first part shall be entitled to and shall receive one-half of all sums which may be recovered in any each suit or suits.

"*Fifth.*—The covenants of the said parties of the second part, contained in the second and third clauses hereof, shall extend to, and be binding upon, their assignees of the right, title and interest in said Letters Patent, or of any undivided part thereof; and if the said parties of the second part, or their said assignees, shall at any time fail to account for and pay over, when due, sums accruing to the said party of the first part, his heirs or assigns, under the terms of the agreement, and shall continue in said default for sixty days after demand for payment, or if they shall fail to keep the stipulation made, in clause three hereof, then, and in any such case, the party or parties so in default shall forfeit all his or their interest in said Letters Patent, and shall reassign the same, by proper instrument in writing, to the said party of the first part, his heirs or assigns.

"*Sixth.*—It is further understood and agreed that the said patented bedstead shall be known as the 'Everitt Bedstead,' and the said parties of the second part shall so term it in their advertisements, circulars, etc.; and it is further agreed that said party of the first part shall have the right to exhibit said patented bedstead at the Centennial Exhibition to be held in the City of Philadelphia.

"*Seventh.*—It is further understood and agreed that any improvements in said patented bedsteads which may be made

by either of the parties hereto, and any Letters Patent of the United States obtained for such improvements, shall be held and enjoyed by said parties of the second part, under and subject to the terms of this agreement; and the said party of the first part, for himself, his legal representatives and assigns, promises and agrees that at the request and expense of the said parties of the second part, or their assigns, he will obtain Letters Patent of the United States for any such improvements made by him, and will execute and deliver proper assignments of the title to said Letters Patent to said parties of the second part or their assigns.

"*Eighth.*—It is further understood and agreed, that if in any suit the said Letters Patent shall be found and adjudged invalid, or to infringe on any other patent or patents, then, and in any such case, the said parties of the second part, or their assigns, may, at their option, surrender to the said party of the first part, his heirs or assigns, all right and claim under this agreement, and thereupon be released from their covenants herein contained, and from any and all obligations whatsoever, under or concerning said agreement.

"In testimony whereof, the said parties hereto have hereunto set their hands and affixed their seals, the day and date first above written.

"ELISHA E. EVERETT, [L. S.]
"HENRY S. HALE, [L. S.]
"ARTEMUS KILBURN, [L. S.]
"J. WARREN HALE, [L. S.]
"H. W. CURTIS, [L. S.]
"CHENEY KILBURN, [L. S.]
"WARREN HALE, [L. S.]

"Sealed and delivered in the presence of us.

"OWEN D. ROBERTS,
"JOHN DIMMICK."

OPINION OF THE COURT OF COMMON PLEAS
No. 4, PER THAYER, P. J.

A careful and thorough examination of the Master's Report and of the voluminous testimony taken in this case has convinced us of the correctness of the Master's findings, and that the conclusions of law which he has reached are reasonable, just, and entirely in accordance with well established principles of equity. No doubt whatever rests upon our minds of the bad faith of the defendants in their dealings with the plaintiff. It is proved by a mass of testimony and a concurrence of circumstances which establishes it beyond the possibility of a doubt. Their own uncontradicted acts, letters, and oral communications, convict them of it so plainly that it is incapable of denial. An attentive perusal of the testimony leaves it a self evident fact which requires neither argument nor demonstration to establish it. They not only broke their express covenant to account justly with the plaintiff, and to pay him monthly his stipulated per centage of the sales, but the evidence shows that they entered into a fraudulent conspiracy, the successive steps in which brought them to the borders if not actually within the lines of criminal responsibility. The object of this conspiracy was to deprive the plaintiff of all benefit of his own invention and to appropriate it exclusively to themselves. The means by which it was to be accomplished was the purchase of the Stark patent, which Mason, their own counsel, testified was not infringed by the plaintiff's patent, the fraudulent re-issue of that patent with such cunning devices that it should be made "to cover entirely the Everitt bedstead," and a secret assignment by Stark to themselves of that which they already owned; to be followed by false and covinous notices to and sham suits against themselves, brought under their own instructions and by their own counsel. All this was duly carried out, was duly discovered by the plaintiff, and is established in all its details in the evidence. The defendants now complain that the Master has reported that they cannot be permitted in equity to avail themselves of

this fraud, and to consummate it by being allowed to set up this fraudulent instrument as a defence to the plaintiff's demands. Nothing can be plainer than that upon the state of facts here exhibited the plaintiff is entitled by some form of decree to be protected against a deed obtained in the pursuit of this fraudulent and injurious purpose. Sometimes equity affords this protection by requiring the delivering up and cancellation of the fraudulent instrument; sometimes by a perpetual injunction against the use of it. What substantial difference does it make to the defendants whether the plaintiff is protected by such a decree or by a decree requiring him to assign the re-issued patent to the plaintiff? The Master has proceeded upon the well established principle that one who has a common interest with and a confidential relation to another cannot avail himself of an outstanding or hostile title or incumbrance to the prejudice of his fellow. Much less can he create one himself. Where he has acted in good faith he will in equity be held to be a trustee of a title obtained for the common benefit, and will be entitled to be reimbursed a proportionate part of the expense of acquiring it; but where he has obtained it for the purpose of defrauding his partner in the adventure he can neither claim any benefit from it himself, nor demand indemnity for his outlay. In such cases the wrong doer is held in equity to be a trustee *ex maleficio* for the interest intended to be defrauded, and equity will compel a conveyance to the *cestui que trust* without compensation. The maxim that no man shall take advantage of his own wrong prevails in equity even more strongly than at law, and with regard to actual fraud the principles of equity in their application to remedial justice are far more comprehensive. Equity will never permit a person to hold a benefit which he has derived from the perpetration of an actual fraud. Neither will it allow him compensation for it in any form whatever. In equity no man can set up his own iniquity as a defence any more than as a cause of action. Our reports are full of cases of constructive trusts arising *ex maleficio*, and it is well settled by many decisions that where an advantage has been gained

by an actual fraud, the wrong doer, who is converted into a trustee *ex maleficio*, is in no condition to demand indemnity for his outlay. These principles have often been applied in this State in various forms of procedure in equity and at law. Most frequently in actions of ejectment, as in Sharp *vs.* Brady, 4 Casey, 433, and Seylor *vs.* Carson, 19 Smith, 81, and the numerous cases there cited by Judge Williams, in which a purchaser acquiring a title by a fraud at a sheriff's sale has been held to be a trustee *ex maleficio* for the person wronged, who might recover against him without a return of the purchase money paid. It is often applied in bills *quia timet*, of which application O'Neil *vs.* Hamilton, 8 Wright, 18, is an illustration, where a fraudulent grantee was compelled to make a conveyance, although he had paid $1000 for his title. Such a trust *ex maleficio* arises whenever a person holding fiduciary relations to another abuses the confidence reposed in him by taking and claiming for himself property which he ought to have applied to the protection of their common interest. The rule was clearly laid down by Sharswood, J., in Duff *vs.* Wilson, 22 Smith, 442, and the other cases cited by the master in his report. It is more strongly applied in equity than at law, for the maxim there is, he who has done iniquity shall not have equity. It is apparent therefore that even if the construction, upon which the defendants so strenuously insist, should be put upon the 5th and 7th articles of the agreement, and it should be conceded that their covenants to assign in case of failure to comply with their contract extended only to improvements made by the parties, their case is no better, for they are still by reason of the actual fraud practised within the operation of the equitable principle which makes them trustees *ex maleficio* without any title to compensation. But in the present case the defendants created themselves the very title which is alleged to be hostle to the plaintiff's rights, for without the re-issue of the Stark patent which *they* obtained the plaintiff would have been in no danger. The plaintiff is entitled therefore to relief and protection against the defendants' fraudulent re-issue of the Stark patent. He might have it by a perpetual injunction against the assignment or use of

that patent, or he may have it upon the principles already adverted to in the form of a decree for a compulsory assignment of it to the plaintiff. The form of the relief is not very material, for the result is the same in either case. The Master has seen fit to recommend the latter alternative. In this we think he is fully sustained both by reason and authority, and by the evidence in the cause, and we see no reason to dissent from his conclusions in that respect.

We are also of opinion that defendants have no just ground of complaint against the Master for the manner in which he has settled and stated the account. The royalty was by the terms of the agreement chargeable on the price of the completed bedstead as a whole, whether expensively or plainly finished, and including springs, ornaments, and all that constituted the complete bedstead when sold. It was not upon any bedstead of a particular pattern, but "upon all the said "patented bedsteads made and sold by them." We see no reason to doubt the correctness of the Master's statement that he has credited the defendants in his supplemental report with all the bedsteads shown not to have been delivered. It clearly appears also upon a careful comparison of the duplicate charges, contained in the defendants' printed statement of those charges submitted to the Court, with the supplemental report submitted by the Master (Exhibit C), that they have all been corrected in that report. A careful examination of the case and of the forty-three exceptions filed by the defendants, has brought us to the conclusion that none of the exceptions are sustained. Let a decree therefore be drawn up for the plaintiff in the form reported by the Master on page 52 of this report, corrected as to the amount of the defendants' indebtedness according to the result reached by the Master in his supplemental report.

Exceptions dismissed.

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

"*Per Curiam.*

"Notwithstanding the full and able argument of counsel for the appellants, we are unable to discover any error in this decree. The evidences of fraud on the part of the company are so manifest as to fully vindicate the conclusion of the Court and to justify the decree.

"Decree affirmed and appeal dismissed at the costs of the appellants."